

EXHIBIT 1

Case No. 14-CV-704-GKF-JFJ

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF OKLAHOMA
3
4 UNITED STATES OF AMERICA,
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6 Plaintiff,
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8 OSAGE MINERALS COUNCIL,
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10 Intervenor-Plaintiff
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12 vs. No. 14-CV-704-GFK-JFJ
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14 OSAGE WIND, LLC; ENEL KANSAS, LLC; and ENEL GREEN POWER
15 NORTH AMERICA, INC.,
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17 Defendants.

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REMOTE VIDEO DEPOSITION OF EVERETT WALLER
TAKEN ON BEHALF OF THE DEFENDANTS
ON AUGUST 5, 2021, BEGINNING AT 10:07 A.M.
TAKEN VIA ZOOM
REPORTED BY MIKE WASHKOWIAK, CCR

15 APPEARANCES:

16 Via Zoom on behalf of the PLAINTIFF

17 Stuart Ashworth
18 UNITED STATES ATTORNEY'S OFFICE
19 110 West 7th Street, Suite 300
20 Tulsa, Oklahoma 74119
21 918-382-2700
22 stuart.ashworth@usdoj.gov

23 Via Zoom on behalf of the INTERVENOR-PLAINTIFF

24 Wilson Pipestem
25 PIPESTEM & NAGLE, P.C.
26 401 South Boston Avenue, Suite 2200
27 Tulsa, Oklahoma 74103
28 918-936-4705
29 wkpipestem@pipestemlaw.com

<p>Page 2</p> <p>1 Via Zoom On behalf of the INTERVENOR-PLAINTIFF</p> <p>2 Abi Fain</p> <p>3 PIPESTEM & NAGLE, P.C.</p> <p>4 401 South Boston Avenue, Suite 2200</p> <p>5 Tulsa, Oklahoma 74103</p> <p>6 918-936-4705</p> <p>7 afain@pipestemlaw.com</p> <p>8 Via Zoom on behalf of the DEFENDANTS</p> <p>9 Thomas J. McCormack</p> <p>10 NORTON ROSE FULBRIGHT</p> <p>11 1301 Avenue of the Americas</p> <p>12 New York, New York 10019</p> <p>13 212-318-3000</p> <p>14 thomas.mccormack@nortonrosefulbright.com</p> <p>15 Via Zoom on behalf of the DEFENDANTS</p> <p>16 Robert Kirby</p> <p>17 NORTON ROSE FULBRIGHT</p> <p>18 1301 Avenue of the Americas</p> <p>19 New York, New York 10019</p> <p>20 212-318-3000</p> <p>21 robert.kirby@nortonrosefulbright.com</p> <p>22 Also present: (all via Zoom) Cathryn McClanahan, US</p> <p>23 Attorney's Office; Charles Babst, US Attorney's Office;</p> <p>24 Michelle Hammock, Christina Watson</p> <p>25 Virtual Videographer: Gabe Pack</p>	<p>Page 4</p> <p>1 THE VIDEOGRAPHER: This is the videotaped</p> <p>2 deposition of Chairman Everett Waller in the matter of the</p> <p>3 United States and Osage Minerals Counsel versus Osage Wind</p> <p>4 on August 5, 2021. We're on the record at 10:07 a.m.</p> <p>5 Will counsel please state your appearances for the record?</p> <p>6 MR. McCORMACK: Yes. I'm Tom McCormack. I'm</p> <p>7 with Norton Rose Fulbright, and we are counsel to the</p> <p>8 defendants in this action.</p> <p>9 MR. KIRBY: This is Robert Kirby, also from</p> <p>10 Norton Rose Fulbright.</p> <p>11 THE COURT REPORTER: Counsel for plaintiff?</p> <p>12 MR. PIPESTEM: Wilson Pipestem, Pipestem and</p> <p>13 Nagle, on behalf of the Osage Minerals Council.</p> <p>14 MS. FAIN: This is Abi Fain, counsel from</p> <p>15 Pipestem and Nagle also on behalf of the intervening</p> <p>16 plaintiff Osage Minerals Council.</p> <p>17 MR. ASHWORTH: Stuart Ashworth on behalf of the</p> <p>18 US. I also have Cathy McClanahan and Nolan Fields with</p> <p>19 the U.S. Attorney's Office, Charles Babst with the</p> <p>20 Department of the Interior, and then I have Michelle</p> <p>21 Hammock and Christina Watson, paralegals with the US</p> <p>22 Attorney's Office.</p> <p>23 THE VIDEOGRAPHER: The court reporter will now</p> <p>24 swear in the witness.</p> <p>25 EVERETT WALLER,</p>
<p>Page 3</p> <p>1 INDEX</p> <p>2 Page</p> <p>3 Direct Examination by MR. McCORMACK 5</p> <p>4</p> <p>5 EXHIBITS</p> <p>6 Number Description Page</p> <p>7 155 Testimony of OMC - Waller 21</p> <p>8 156 Interview with Chairman Waller 37</p> <p>9 157 news article from July 2014 40</p> <p>10 158 OMC candidate interview, Waller 61</p> <p>11 159 Constitution of the Osage Nation 99</p> <p>12 160 First Amended Complaint 117</p> <p>13 161 Osage Nation letter to Enel 146</p> <p>14 162 Enel letter to Standing Bear, 159</p> <p>15 Redcorn and Waller</p> <p>16 163 OMC response letter to Enel 160</p> <p>17 164 OMC minutes from November 2015 174</p> <p>18 165 OMC minutes from August 2015 175</p> <p>19</p> <p>20 STIPULATIONS</p> <p>21 It is stipulated that the deposition of EVERETT</p> <p>22 WALLER may be taken pursuant to agreement and in</p> <p>23 accordance with the Federal Rules of Civil Procedure on</p> <p>24 AUGUST 5, 2021, before Mike Washkowiak, CCR.</p> <p>25</p>	<p>Page 5</p> <p>1 after having been first duly sworn, deposes and says in</p> <p>2 reply to the questions propounded as follows, to-wit:</p> <p>3 DIRECT EXAMINATION</p> <p>4 BY MR. MCCORMACK:</p> <p>5 Q Good morning, Mr. Waller.</p> <p>6 MR. McCORMACK: Before we begin, may I ask one</p> <p>7 quick question? Who is going to be defending Mr. Waller's</p> <p>8 deposition today? I heard a lot of defense counsel, but I</p> <p>9 wasn't sure of that.</p> <p>10 MR. PIPESTEM: Well, there's just two of us, and</p> <p>11 it will be me, Wilson Pipestem.</p> <p>12 MR. McCORMACK: Thank you, Mr. Pipestem.</p> <p>13 Q (BY MR. McCORMACK) All right, Mr. Waller, will</p> <p>14 you please state your full name for the record?</p> <p>15 A Everett Mayton Waller.</p> <p>16 Q How old a man are you as you sit here today?</p> <p>17 A I am 62 years old.</p> <p>18 Q Where do you live?</p> <p>19 A I reside in the Hominy Indian Village, Hominy,</p> <p>20 Oklahoma.</p> <p>21 Q Could you please give us a brief description of</p> <p>22 your educational background?</p> <p>23 A Yes, sir. I was -- went to school here in</p> <p>24 Hominy, graduated, attended the University of Oklahoma.</p> <p>25 Then I went on to the Bureau of Indian Affairs and went to</p>

<p>Page 6</p> <p>1 OSU Extensions and took my certifications to the federal</p> <p>2 side.</p> <p>3 Q When you say OSU Extensions, could you give us a</p> <p>4 brief description of what you mean by that statement?</p> <p>5 A Yes, sir. They have a program for which they</p> <p>6 train you on different developments in the fossil fuels</p> <p>7 industry.</p> <p>8 Q Understood. Now, as I understand your resume,</p> <p>9 and I've seen information online with regard to it, you</p> <p>10 have worked in some capacity in the Osage area or in Osage</p> <p>11 County since you got out of college?</p> <p>12 A Yes, sir.</p> <p>13 Q And that included a stint with the BIA?</p> <p>14 A Yes, sir.</p> <p>15 Q And what were the jobs that you were doing in</p> <p>16 that period of time leading up to the time that is most</p> <p>17 relevant here, which is your time on the OMC, and we'll</p> <p>18 get to that, but what were you doing in that time frame</p> <p>19 between the time you got out of the University of Oklahoma</p> <p>20 and you ended up on the OMC?</p> <p>21 A I went right to work in the Bureau of Indian</p> <p>22 Affairs, the Branch of Minerals. I was hired as a gauger,</p> <p>23 one of the first to go out in the field and gauge our</p> <p>24 tanks for sale. Then I went on to become a petroleum</p> <p>25 engineer technician in the same branch, and I ended my</p>	<p>Page 8</p> <p>1 entailed?</p> <p>2 A Yes, sir. It was the Osage National Council</p> <p>3 through a referendum government was brought in, and that</p> <p>4 it established itself as a criteria under our</p> <p>5 Constitution.</p> <p>6 Q And then you also served as president of the</p> <p>7 Intertribal Transportation Association from 1996 to 1998?</p> <p>8 A That's correct. And I also sat as the area</p> <p>9 representative preceding that.</p> <p>10 Q What did you -- what were your duties, if you</p> <p>11 will, as the president of the Intertribal Transportation</p> <p>12 Association?</p> <p>13 A To help establish the development of roads,</p> <p>14 bridges, and byways in the reservations and Indian lands</p> <p>15 across the nation.</p> <p>16 Q And that involved activities beyond Osage County</p> <p>17 in Oklahoma?</p> <p>18 A Yes, sir, it did.</p> <p>19 Q That was more national in scope?</p> <p>20 A Yes, sir.</p> <p>21 Q And then after that, you served as a board</p> <p>22 member of the State of Oklahoma Tribal Advisory Committee?</p> <p>23 A That's correct.</p> <p>24 Q What were your duties in connection with that</p> <p>25 work, Mr. Waller?</p>
<p>Page 7</p> <p>1 tenure as a field supervisor for the whole reservation.</p> <p>2 Q During that period of time, did you ever work on</p> <p>3 oil wells in the field and act in any capacity relative to</p> <p>4 the drilling of oil on the Osage Estate?</p> <p>5 A Sir, that was before I started for the Bureau of</p> <p>6 Indian Affairs, and yes, I have.</p> <p>7 Q I see. I'm from Texas originally. I'm familiar</p> <p>8 with the oil and gas business. I've been on oil wells, so</p> <p>9 I was just curious if you had that same experience?</p> <p>10 A Yes, I do.</p> <p>11 Q All right. Did you work as a roustabout, or</p> <p>12 were you working in some supervisory capacity?</p> <p>13 A No, sir, I was on the rig floor and roustabout.</p> <p>14 Q All right, and how long did you do that?</p> <p>15 A I actually had summer jobs for three years, and</p> <p>16 then I worked with the private sector on the pulling</p> <p>17 units.</p> <p>18 Q Was that all in Osage County, or was that in</p> <p>19 different parts of either Oklahoma or other states?</p> <p>20 A I was on drilling rigs for Kurt Brown and Hughes</p> <p>21 Drilling on the scoop and stack, and the rest of all my</p> <p>22 commitments were here in the Osage.</p> <p>23 Q All right. I know from looking at your resume</p> <p>24 that from 1994 to '96 you were a councilman of the Osage</p> <p>25 National Council. Can you tell me briefly what that work</p>	<p>Page 9</p> <p>1 A We developed and maintained the connection</p> <p>2 between the State of Oklahoma and tribal transportation</p> <p>3 improvement programs.</p> <p>4 Q You mentioned transportation. Was that</p> <p>5 primarily focused on issues of transportation within Osage</p> <p>6 County or other counties in Oklahoma?</p> <p>7 A Yes, sir.</p> <p>8 Q What was the purpose and scope of that work, if</p> <p>9 I may ask?</p> <p>10 A A better connection between the communications</p> <p>11 of the tribes and their programs through the federal</p> <p>12 government, IC legislation, Next T, T21 of those areas</p> <p>13 through federal highways.</p> <p>14 Q All right. And then from -- I know, and let's</p> <p>15 kind of move up to the Osage Minerals Counsel. I know</p> <p>16 that you have been on the Osage Minerals Council since</p> <p>17 2014; is that right?</p> <p>18 A Correct.</p> <p>19 Q And you obviously have a great deal of</p> <p>20 experience and history in the Osage County and Osage</p> <p>21 Nation. Were you a formal or informal advisor to the</p> <p>22 Osage Minerals Council before you became a formal member</p> <p>23 in 2014?</p> <p>24 A That's correct.</p> <p>25 Q And you obviously have a significant background</p>

<p>Page 10</p> <p>1 in oil and gas. What was the nature of the counsel or</p> <p>2 advice that people sought from you prior to your being on</p> <p>3 the Osage Minerals Council that might be helpful to the</p> <p>4 Osage Minerals Council?</p> <p>5 A Sir, I worked for Chief John D Red Eagle as</p> <p>6 council liaison directly to the chief's office.</p> <p>7 Q How long -- how long were you working for that</p> <p>8 individual?</p> <p>9 A For approximately four years.</p> <p>10 Q All right. So prior to 2014, would it be fair</p> <p>11 to say you that were familiar with activities and events</p> <p>12 that were taking place within the Osage Minerals Council?</p> <p>13 A Yes, sir.</p> <p>14 Q Who at that time prior to you becoming on the</p> <p>15 Osage Minerals Council -- well, let me step back. I</p> <p>16 withdraw that question.</p> <p>17 How did it come about that you were asked to be</p> <p>18 on the Osage Minerals Council in 2014?</p> <p>19 A Through the participants of the shareholders</p> <p>20 requesting that I run for this seat.</p> <p>21 Q All right. I apologize, I missed a little bit</p> <p>22 of it in my own head. Prior to 2014 you served in the</p> <p>23 capacity as an advisor to whom again?</p> <p>24 A Chief John D Red Eagle.</p> <p>25 Q Chief John D Red Eagle was chief of the Osage</p>	<p>Page 12</p> <p>1 MR. McCORMACK: Okay. I'm going to ask my</p> <p>2 questions. If you're going to instruct the witness not to</p> <p>3 answer, I can't stop that.</p> <p>4 Q (BY MR. McCORMACK) Prior to two thousand --</p> <p>5 prior to 2014 when you were on the Minerals Counsel, were</p> <p>6 there interactions between the Osage Nation and the Office</p> <p>7 of the Chief John Red Eagle and the Osage Minerals Council</p> <p>8 regarding issues of mutual concern concerning the Osage</p> <p>9 Mineral Estate?</p> <p>10 A Yes.</p> <p>11 Q In your experience how would that -- how would</p> <p>12 that come about? Was that a regular communication? Did</p> <p>13 they share the same offices? Did sometimes the members of</p> <p>14 the Osage Minerals Council approach the chief and his</p> <p>15 staff prior to meetings? You were there. What was the</p> <p>16 practical sense of how that worked?</p> <p>17 A The council handled its tribal business, and I</p> <p>18 reported directly to the chief immediately afterwards.</p> <p>19 Q Would you attend the meetings, Mr. Waller, on</p> <p>20 behalf of the Osage Nation?</p> <p>21 A Yes.</p> <p>22 Q All right. So that's important for me to know,</p> <p>23 thank you. So in the period 2010 when you were working</p> <p>24 for Chief John Red Eagle and prior to becoming a member of</p> <p>25 the Osage Minerals Council in 2014, did you regularly</p>
<p>Page 11</p> <p>1 Nation at that time?</p> <p>2 A That's correct.</p> <p>3 Q How long did you serve as an advisor to Chief</p> <p>4 John D Red Eagle?</p> <p>5 A From 2010 to 2014, July.</p> <p>6 Q And was there, and I'm trying to get the sense</p> <p>7 of it, and I've done my homework on the Osage Nation as</p> <p>8 best I could and on the Osage Minerals Council as best I</p> <p>9 could, can you give me a sense of in that time frame</p> <p>10 between 2010 and 2014 what was the nature of the</p> <p>11 communications between the office of Chief Red Eagle and</p> <p>12 the Osage Minerals Council relative to issues that would</p> <p>13 be of interest to both the Osage Nation and the Osage</p> <p>14 Minerals Council?</p> <p>15 MR. PIPESTEM: Objection. I'm going to -- this</p> <p>16 is irrelevant to this case to the extent this question</p> <p>17 gets into matters before this litigation was filed. To</p> <p>18 the extent that the witness's answers involve information</p> <p>19 before this case was initiated, the Court has ruled that</p> <p>20 that information is not relevant. So I'm instructing the</p> <p>21 witness not to answer any questions related to</p> <p>22 communications related to this issue before that time.</p> <p>23 MR. McCORMACK: When you say "this issue," what</p> <p>24 issue are you talking about?</p> <p>25 MR. PIPESTEM: The issue of this litigation.</p>	<p>Page 13</p> <p>1 attend Osage Minerals Council's meetings?</p> <p>2 A Yes.</p> <p>3 Q Was one of your billets, if you will, one of</p> <p>4 your duties relatives to your work for Chief Red Eagle to</p> <p>5 report on what was taking place at the Osage Minerals</p> <p>6 Council in that time frame, 2010 to 2014?</p> <p>7 A Yes.</p> <p>8 Q Okay. So this was one of the things that you</p> <p>9 were personally responsible for, if you will, in terms of</p> <p>10 keeping the chief advised as to what was taking place</p> <p>11 during the Osage Minerals Council's meetings?</p> <p>12 A At all times.</p> <p>13 Q All right. Did you have any formal title that</p> <p>14 was relevant to the Osage Minerals Council prior to</p> <p>15 becoming a member of the Osage Minerals Council in 2014?</p> <p>16 A No.</p> <p>17 Q Were you ever asked to serve on any ad hoc</p> <p>18 committees or to work with any members of the Osage</p> <p>19 Minerals Council on particular subject matters prior to</p> <p>20 becoming a member of the Osage Minerals Council in 2014?</p> <p>21 A I offered my assistance, but I wasn't sitting on</p> <p>22 committees.</p> <p>23 Q Understood. Just as a sense of how it worked,</p> <p>24 would the Osage Minerals Council sometimes approach you,</p> <p>25 Mr. Waller, and say look, we'd like your advice and</p>

<p style="text-align: right;">Page 14</p> <p>1 thoughts on this subject matter in that time frame, 2010 2 to 2014?</p> <p>3 A Yes.</p> <p>4 Q Did Chief Red Eagle sometimes attend Osage 5 Mineral Council's meetings in the period of time when you 6 were working for him in the period 2010 and 2014?</p> <p>7 A Yes.</p> <p>8 Q What might be a reason why, in your experience 9 and observations, that Chief Red Eagle would attend Osage 10 Minerals Council meetings in that time frame, 2010 to 11 2014?</p> <p>12 A The council was working on some federal efforts 13 through EPA, for an example, and other federal entities.</p> <p>14 Q That was a significant enough event that the 15 members of the Osage Minerals Council or yourself felt it 16 was important for the chief to be present?</p> <p>17 A Yes.</p> <p>18 Q All right. Do you remember any particular 19 subject matter that came up in that time frame relative to 20 the Osage Minerals Council's responsibilities that Chief 21 Red Eagle actively participated in in that time frame 2010 22 to 2014?</p> <p>23 A Yes.</p> <p>24 Q Can you give me a brief description of what that 25 is?</p>	<p style="text-align: right;">Page 16</p> <p>1 of the OMC by virtue of your participation in those 2 meetings?</p> <p>3 A To what information I was privy to, yes.</p> <p>4 Q All right. In addition to meeting with the 5 Osage Minerals Council in that timeframe, 2010 to 6 July 2014 when you became a formal member, did you also 7 meet with members of the Osage Minerals Council informally 8 in that time frame on issues of mutual concern between the 9 Osage Minerals Council and the Osage Nation?</p> <p>10 A If requested.</p> <p>11 Q All right. Who would typically make that 12 request?</p> <p>13 A It'd be the chairman.</p> <p>14 Q Chairman. And at that time who was the chairman 15 of the Osage Minerals Council?</p> <p>16 A Mr. Yates.</p> <p>17 Q Mr. Yates. In what time frame was Mr. Yates the 18 chairman of the Osage Minerals Council, if you recollect, 19 sir?</p> <p>20 A I can only tell you that he replaced Mr. Crum.</p> <p>21 I don't have the dates, sir.</p> <p>22 Q All right. But Mr. Crum, was he the chairman of 23 the Osage Minerals Council when you first started 24 attending meetings on behalf of Chief John D Red Eagle in 25 2010?</p>
<p style="text-align: right;">Page 15</p> <p>1 A As I just stated, we were working through the 2 EPA program, they had some other situations whichever the 3 council felt necessary that we stayed as a unit, the 4 Nation.</p> <p>5 Q Understood. When did Chief John D Red Eagle 6 stop being the principal chief of the Osage Nation?</p> <p>7 A At the end of '14.</p> <p>8 Q End of '14. Is that when Standing Bear became 9 the principal chief?</p> <p>10 A No, sir.</p> <p>11 Q I'm sorry, I missed someone. Who came after 12 Chief Red Eagle?</p> <p>13 A Scott BigHorse.</p> <p>14 Q That was the end of 2014, did you say?</p> <p>15 A Yes.</p> <p>16 Q I apologize if I asked for this previously, but 17 can you give me the exact date when you became a member of 18 the Osage Minerals Council?</p> <p>19 A July 18, 2014 at the first regular meeting.</p> <p>20 Q Prior to July 18, 2014, Mr. Waller, what would 21 you say was the percentage of Osage Minerals Council 22 meetings you had attended during the period 2010 to 2014 23 when you were working with Chief John D Red Eagle?</p> <p>24 A Almost every one of them.</p> <p>25 Q All right, so you were familiar with activities</p>	<p style="text-align: right;">Page 17</p> <p>1 A Mr. Widehorn.</p> <p>2 Q I'm sorry, say that again?</p> <p>3 A Mr. Dudley Widehorn.</p> <p>4 Q Widehorn, all right. So Mr. Widehorn was the 5 chairman of the OMC in 2010, and then Mr. Crum replaced 6 him and then Mr. Yates replaced him?</p> <p>7 A That's correct, to the best of my recollection.</p> <p>8 Q Thank you. Is that all in the period between 9 2010 and July of 2014?</p> <p>10 A Yes, sir.</p> <p>11 Q All right. And then in 2014 did you become the 12 chairman of the OMC?</p> <p>13 A Yes, I did.</p> <p>14 Q All right. And you replaced Mr. Yates?</p> <p>15 A Yes.</p> <p>16 Q All right, I mentioned a moment ago that prior 17 to you becoming chairman of the OMC in July 2014 you had 18 periodically been asked by the chairman to participate in 19 discussions involving the business of the OMC and 20 potentially the Osage Nation, and then you mentioned 21 Mr. Crum. Had Mr. Widehorn or Mr. Yates also periodically 22 approached you in the period between 2010 and 2014 to 23 discuss OMC business?</p> <p>24 A Yes.</p> <p>25 Q All right. Was that on a regular basis, or was</p>

<p style="text-align: right;">Page 18</p> <p>1 that out of the ordinary? Was that something that was a</p> <p>2 normal part of your daily routine? How would you describe</p> <p>3 that as the person who was there?</p> <p>4 A It was regular.</p> <p>5 Q And again, I apologize for not knowing, but does</p> <p>6 the Osage Nation and the OMC share a certain office space</p> <p>7 or building in which you would be in the same location on</p> <p>8 a daily basis?</p> <p>9 A I would be in their offices and chambers, but I</p> <p>10 actually had an office in the executive side.</p> <p>11 Q All right. What is the distance between the OMC</p> <p>12 Business Office and the Osage Nation Business Office, if I</p> <p>13 can ask that question?</p> <p>14 A About a football field's length away.</p> <p>15 Q All right. So did you often find yourself in</p> <p>16 the Osage Minerals Council's facilities in the period</p> <p>17 between 2010 and July of 2014 dealing with either any of</p> <p>18 the chairmen or others with regard to OMC business?</p> <p>19 A Yes, unless directed elsewhere by the chief.</p> <p>20 Q All right. Who first approached you,</p> <p>21 Mr. Waller, with the idea of you becoming the chairman of</p> <p>22 the Osage Minerals Council?</p> <p>23 A The council just made that decision. It wasn't</p> <p>24 a -- I was just voted in.</p> <p>25 Q All right. Was there -- I apologize. Let me go</p>	<p style="text-align: right;">Page 20</p> <p>1 elected as the chairman?</p> <p>2 A Yes.</p> <p>3 Q All right. So you were elected by the headright</p> <p>4 members in the same time frame, July of 2014?</p> <p>5 A Yes.</p> <p>6 Q All right. Then the council itself made you the</p> <p>7 chair in that time frame, fair enough?</p> <p>8 A Thank you.</p> <p>9 Q Let me ask you, the court reporter, to tag as an</p> <p>10 Exhibit, I believe we're up to 155 now. It's at tab B of</p> <p>11 the materials. It's called Testimony of Osage Minerals</p> <p>12 Council Chairman Everett Waller from July 2019.</p> <p>13 MR. PIPESTEM: Counsel, this document, it may</p> <p>14 just be me, but it's difficult to read on my screen. Am I</p> <p>15 the only one with that concern or issue?</p> <p>16 MR. McCORMACK: No, I have the same issue.</p> <p>17 Let's see if they can't improve it some.</p> <p>18 MR. PIPESTEM: Okay.</p> <p>19 MR. McCORMACK: Mr. Concierge, maybe even better</p> <p>20 than that. Mr. Waller is 62, I'm 65; it would be nice if</p> <p>21 we could see the document.</p> <p>22 THE WITNESS: Thank you.</p> <p>23 THE VIDEOGRAPHER: Is there a particular section</p> <p>24 you would like me to zoom in?</p> <p>25 MR. McCORMACK: Why don't we start with the</p>
<p style="text-align: right;">Page 19</p> <p>1 back and get a couple of other points I wasn't sure of. I</p> <p>2 know that Chief John Red Eagle was chief from 2010 forward</p> <p>3 and then he was replaced by Scott BigHorse?</p> <p>4 A That's correct.</p> <p>5 Q And that happened at the end of 2014?</p> <p>6 A Yes.</p> <p>7 Q And then who came after Chief Scott Bighorse?</p> <p>8 A Chief Standing Bear won the election when I won</p> <p>9 my council election.</p> <p>10 Q All right. And you do have to stand for</p> <p>11 election by members who have rights, headrights, if you</p> <p>12 will, to be on the OMC; is that right?</p> <p>13 A Yes.</p> <p>14 Q Did a chairman also have to be elected, or could</p> <p>15 a chairman be selected by the elected members of the OMC?</p> <p>16 A That's how the position is filled, by elected</p> <p>17 members of the council.</p> <p>18 Q And then do you have to stand for election as</p> <p>19 chairman, or are you elected as the OMC chair by the</p> <p>20 elected members of the OMC?</p> <p>21 A I'm elected by the sitting members.</p> <p>22 Q All right. So you don't stand for general</p> <p>23 election of the headright owners; is that right?</p> <p>24 A Just for the position of council.</p> <p>25 Q Oh, I see. And did you do that before you were</p>	<p style="text-align: right;">Page 21</p> <p>1 first paragraph?</p> <p>2 THE VIDEOGRAPHER: Okay.</p> <p>3 MR. McCORMACK: Maybe you can blow that up.</p> <p>4 There you go. Is that better? I think that works.</p> <p>5 Q (BY MR. McCORMACK) Just looking at the second</p> <p>6 sentence, Mr. Waller, it says, "I have the honor of</p> <p>7 serving as a chairman of the Osage Minerals Council, an</p> <p>8 independent agency within the Osage Nation government that</p> <p>9 is constitutionally empowered to administer and develop</p> <p>10 the Osage Mineral Estate." Let me ask you, first of all,</p> <p>11 this is a statement that you made in around July 11, 2019?</p> <p>12 (WHEREUPON, Exhibit 155 was marked for</p> <p>13 identification.)</p> <p>14 A Yes.</p> <p>15 Q And what is your understanding of the Minerals</p> <p>16 Council's constitutional authority to administer and</p> <p>17 develop the Osage Mineral Estate?</p> <p>18 A Under the Constitution of the Osage Nation, the</p> <p>19 OMC under Article 15 is given this as we were given the</p> <p>20 same empowerment as the tribal council that I had sat on.</p> <p>21 Q Let me ask you to now go to paragraph three of</p> <p>22 the document. Looking at Exhibit 155 paragraph three, it</p> <p>23 states something I don't think there's a dispute about,</p> <p>24 which is that the Osage Reservation spans an area of</p> <p>25 approximately 1.47 million acres and is contiguous with</p>

<p>Page 22</p> <p>1 Osage County, Oklahoma. Do you see that?</p> <p>2 A Yes.</p> <p>3 Q And that's an accurate statement, that Osage</p> <p>4 County is essentially 1.47 million acres, and that is the</p> <p>5 mineral estate that the Osage Nation owns, correct?</p> <p>6 A The reservation is, yes.</p> <p>7 Q All right. Let me ask you to turn to page two</p> <p>8 and to look at the third paragraph on page two. I want to</p> <p>9 look in particular at that last sentence there. It says,</p> <p>10 "In 2014 the Osage Agency estimated that in fiscal years</p> <p>11 2012 through 2027, the Osage Mineral Reservation would</p> <p>12 generate \$13.6 billion in royalties for our Osage</p> <p>13 headright holders." Do you see that?</p> <p>14 A Yes.</p> <p>15 Q And that was -- that was -- how did it come</p> <p>16 about that the Osage Agency was estimating the potential</p> <p>17 generation of royalties in 2014? Was that something that</p> <p>18 the Osage Minerals Council asked them to do, or did they</p> <p>19 do that of their own accord?</p> <p>20 A It is recorded and then brought to the council</p> <p>21 monthly.</p> <p>22 Q All right. Do they make an estimate -- let me</p> <p>23 stand back for a second.</p> <p>24 Do they monthly estimate what the potential</p> <p>25 generation of royalties will be for 15 years, or do they</p>	<p>Page 24</p> <p>1 A Yes.</p> <p>2 Q All right, have they -- what percentage are they</p> <p>3 off from the estimated \$13.6 billion in royalties for this</p> <p>4 time frame?</p> <p>5 A That would only be under the production data.</p> <p>6 Q Do you have a generalized sense of it as the</p> <p>7 chairman as to where we are in terms the OMC against this</p> <p>8 estimate?</p> <p>9 A I couldn't give that number correctly.</p> <p>10 Q All right. Do you also know, of the</p> <p>11 \$13.6 billion number that was estimated for this time</p> <p>12 frame 2014 to 2027 what part of that or what percentage of</p> <p>13 the \$13.6 billion was estimated to be from hard minerals?</p> <p>14 A A minimal amount of that.</p> <p>15 Q I mean, would you say, I'm guessing as someone</p> <p>16 who did oil and gas that oil and gas is probably</p> <p>17 99 percent of that number? Is that reasonable or not</p> <p>18 reasonable?</p> <p>19 A I'm a little more conservative. I think it's</p> <p>20 probably 97.</p> <p>21 Q All right, fair enough. If you look at the next</p> <p>22 paragraph on what we've marked as Exhibit 155, it starts</p> <p>23 with the words "as a result." This document was prepared,</p> <p>24 I think it was established, in July 2019 pre-pandemic? It</p> <p>25 says, "In recent years Osage minerals production has</p>
<p>Page 23</p> <p>1 do that only on a periodic basis?</p> <p>2 A I actually receive what has been sold.</p> <p>3 Q You receive the actual sales figures and then</p> <p>4 report them to the headright owners, yes?</p> <p>5 A That's correct.</p> <p>6 Q But how did it come about that this is a</p> <p>7 particular estimate for a 15-year period where it was</p> <p>8 estimated that just under \$1 billion, if you will, on an</p> <p>9 annualized basis would be generated by the estate. I'm</p> <p>10 curious as to how it came about that that estimate was</p> <p>11 done, if you know?</p> <p>12 A It's from the information that the agency has</p> <p>13 delivered to the council.</p> <p>14 Q All right. And we're now seven years into that</p> <p>15 15-year period. Do you know whether or not the estimates</p> <p>16 that were provided in 2014 of this type of royalty revenue</p> <p>17 have been met or not met?</p> <p>18 A To date?</p> <p>19 Q Yes, sir.</p> <p>20 A The pandemic and prices have changed that</p> <p>21 somewhat.</p> <p>22 Q All right. I'm just trying to determine whether</p> <p>23 the Osage Minerals Council is keeping tabs of this</p> <p>24 estimate against actual performance. That's what I'm</p> <p>25 trying to find out.</p>	<p>Page 25</p> <p>1 dramatically slowed." Do you see that?</p> <p>2 A Yes.</p> <p>3 Q Then it goes on to say in the last sentence</p> <p>4 there, "This decline in revenue is in part the result of</p> <p>5 systems and decisions related to administration of the</p> <p>6 Osage Mineral Estate." Do you see that?</p> <p>7 A My highlight is not that. Mine is showing a</p> <p>8 TERA question.</p> <p>9 Q That's weird. I'm sorry, it's the last -- oh</p> <p>10 yeah. Yes, it's the fourth paragraph down. Thank you,</p> <p>11 Mr. Waller.</p> <p>12 MR. McCORMACK: The fourth paragraph down, Mr.</p> <p>13 Concierge. There you go.</p> <p>14 Q (BY MR. McCORMACK) Okay, I'm sorry Mr. Waller,</p> <p>15 this is now the correct item.</p> <p>16 A Thank you.</p> <p>17 Q I think we talked about the first sentence says</p> <p>18 in recent years Osage minerals production has dramatically</p> <p>19 slowed. And then the next sentence says, "This lack of</p> <p>20 production results in a human cost to our Osage headright</p> <p>21 holders, including elders who rely on income from Osage</p> <p>22 minerals." And then it says, "This decline in revenue is</p> <p>23 in part the result of systems and decisions related to</p> <p>24 administration of the Osage Mineral Estate." Do you see</p> <p>25 that?</p>

<p>Page 26</p> <p>1 A Yes.</p> <p>2 Q I know I have the headright information, which</p> <p>3 is publicly available, and I recognize that it has dropped</p> <p>4 meaningfully over the last several years. Again, this is</p> <p>5 in July 2019 pre-pandemic. I was curious as to what you</p> <p>6 meant in that last sentence, "This decline in revenues is</p> <p>7 in part the result of systems and decisions related to</p> <p>8 administration of the Osage Mineral Estate." What did you</p> <p>9 mean by that?</p> <p>10 A There's many things that envelop what we get</p> <p>11 paid today. Today we got paid 64.43 on the price of a</p> <p>12 barrel. There was other issues included in this;</p> <p>13 regulatory, the global market, and of course the pandemic.</p> <p>14 Q The pandemic has had an additional negative</p> <p>15 impact on the production of oil and gas out of the Osage</p> <p>16 fields?</p> <p>17 A Yes.</p> <p>18 Q Is that a demand issue, or is that a personnel</p> <p>19 issue, or is that an equipment issue? From your</p> <p>20 perspective as chairman of the council, what is your view</p> <p>21 of that issue relative to the pandemic?</p> <p>22 A We were asked by the United States government to</p> <p>23 allow some of the larger production elements to have to</p> <p>24 shut in for bid because they could operate it. Personnel</p> <p>25 is part of that answer.</p>	<p>Page 28</p> <p>1 Q Would that be monthly?</p> <p>2 A At best.</p> <p>3 Q All right. Have you ever heard him in a public</p> <p>4 forum or otherwise refer to the BIA's stewardship of the</p> <p>5 estate as "a disaster?" For instance, in the state of the</p> <p>6 nation address that he gave in March of this year?</p> <p>7 A Yes.</p> <p>8 Q All right. Have you spoken to him about that</p> <p>9 subject matter?</p> <p>10 A Yes.</p> <p>11 Q Do you share his view that the BIA's stewardship</p> <p>12 of the estate has been a disaster?</p> <p>13 A I am in a different position to be stating</p> <p>14 things like that.</p> <p>15 Q Understood. But this is a deposition, I do have</p> <p>16 the right to ask. So do you share that, let's just keep</p> <p>17 you away from the OMC, personally do you share that view</p> <p>18 of Chief Standing Bear relative to the stewardship of the</p> <p>19 BIA, personally?</p> <p>20 A I feel like I've been working a situation that</p> <p>21 shows where they're understaffed, underpaid. I agree that</p> <p>22 that has been their problem, and that part I do agree</p> <p>23 with. And then we have been looking as a council of the</p> <p>24 options, which the chief has directed also, of a TERA</p> <p>25 possibility. I as Tribal Council used to have direct</p>
<p>Page 27</p> <p>1 Q Has that improved any with -- well, I guess with</p> <p>2 the current circumstance it's hard to say, but with</p> <p>3 vaccinations and whatnot has that improved any in terms of</p> <p>4 personnel available to work the field?</p> <p>5 A Yes, sir, and the price I just quoted you.</p> <p>6 Q Okay. I know I've read some statements here and</p> <p>7 there of Chief Standing Bear, and I think he's referred to</p> <p>8 the BIA's management of the Osage Estate as "a disaster."</p> <p>9 Have you ever heard Chief Standing Bear say that?</p> <p>10 MR. PIPESTEM: Objection. Assuming facts not in</p> <p>11 evidence.</p> <p>12 Q (BY MR. McCORMACK) You can answer. I don't</p> <p>13 think it's a secret, but have you ever heard Chief</p> <p>14 Standing Bear refer to BIA's management of the Estate as</p> <p>15 "a disaster"?</p> <p>16 MR. PIPESTEM: Same objection.</p> <p>17 Q (BY MR. McCORMACK) You can answer. Perhaps</p> <p>18 Mr. Waller's camera has frozen up?</p> <p>19 A No.</p> <p>20 Q Sorry. You're thinking. My apologies.</p> <p>21 A I don't have that document in front of me.</p> <p>22 Q How often do you see Chief Standing Bear?</p> <p>23 A As much as he lets me.</p> <p>24 Q Would that be weekly?</p> <p>25 A No, sir.</p>	<p>Page 29</p> <p>1 service elements brought to my tribe, so that's what I</p> <p>2 think personally.</p> <p>3 Q Well, you've been involved at least in OMC</p> <p>4 matters since 2010, and as we've discussed you've been</p> <p>5 involved in oil and gas related exploration on the Osage</p> <p>6 Reservation for your entire career. Did you have that</p> <p>7 view only recently of the BIA, or is that an historical</p> <p>8 view as well, your personal view?</p> <p>9 A They can always do a better job.</p> <p>10 Q All right. And I'm asking because that sentence</p> <p>11 that we went over that was in Exhibit 155, and it says</p> <p>12 "This decline in revenue is in part a result of systems</p> <p>13 and decisions related to administration of the Osage</p> <p>14 Mineral Estate," and you didn't mention the BIA, but I</p> <p>15 certainly understand Chief Standing Bear's view of that.</p> <p>16 I've gotten your personal view of that. Was that an</p> <p>17 element of what you intended to get across in that</p> <p>18 statement that you made in July of 2019, which is the</p> <p>19 BIA's role in this?</p> <p>20 A Among other items that I feel like we have to</p> <p>21 look at all options available to the council to protect</p> <p>22 and increase our production in the laws that we live by.</p> <p>23 Q Has the council made suggestions and proposed</p> <p>24 changes to the BIA that might address some of the issues</p> <p>25 that you identified in your previous answers concerning</p>

<p>Page 30</p> <p>1 some of the issues that are present at the BIA and its</p> <p>2 management of the Osage Estate?</p> <p>3 A We are waiting on to receive the CFR codes and</p> <p>4 see if those updates will give us the relief we are</p> <p>5 looking for.</p> <p>6 Q Have you had, have you personally, Mr. Waller,</p> <p>7 had conversations with BIA representatives on these</p> <p>8 subject matters, that is, ways in which the BIA can</p> <p>9 improve its performance in your view relative to the</p> <p>10 estate?</p> <p>11 A Yes.</p> <p>12 Q What suggestions have you presented to the BIA</p> <p>13 in that regard?</p> <p>14 A That we need to be a competitive element in</p> <p>15 production and development without having the impasses in</p> <p>16 which we had because we are a reservation; permits,</p> <p>17 leasing, things next door under Corporation Commission in</p> <p>18 the State of Oklahoma will take you days, whereas</p> <p>19 possibilities it could take you weeks to months on the</p> <p>20 federal side.</p> <p>21 Q Would you put that in the realm of bureaucratic</p> <p>22 red tape that needs to be cut through to be more</p> <p>23 competitive?</p> <p>24 A Oh, we agree on that.</p> <p>25 Q All right. And you mentioned permits and</p>	<p>Page 32</p> <p>1 have to go to the BIA first before the OMC has an</p> <p>2 opportunity to approve?</p> <p>3 MR. McCORMACK: Counsel, I wasn't sure. Did you</p> <p>4 instruct this witness not to answer, or did you simply</p> <p>5 object to the question?</p> <p>6 MR. PIPESTEM: I objected, and I also instructed</p> <p>7 the witness not the answer to the extent that information,</p> <p>8 the answer to that question involves answers related to</p> <p>9 the scope of this litigation before the Complaint in this</p> <p>10 lawsuit was filed.</p> <p>11 MR. McCORMACK: Again, I'll ask the questions.</p> <p>12 If you wish to instruct him not to answer, there's nothing</p> <p>13 I can do about that.</p> <p>14 Q (BY MR. McCORMACK) With regard to the answer</p> <p>15 that you gave to me concerning leases and permits, were</p> <p>16 you referring to what we'll call Section 226 oil and gas</p> <p>17 leases and permits, or were you referring to something</p> <p>18 else?</p> <p>19 A Was that directed to me?</p> <p>20 Q Yes, sir.</p> <p>21 A All the above.</p> <p>22 Q So oil and gas, so the 226, if you will, but</p> <p>23 also 214 and 211, if I may use that terminology?</p> <p>24 MR. PIPESTEM: Objection. For the reason as I</p> <p>25 stated before, I'm instructing the witness not to answer</p>
<p>Page 31</p> <p>1 leasing. When did you first have conversations that you</p> <p>2 can recall with the BIA with regard to permits and</p> <p>3 leasing?</p> <p>4 A 2000.</p> <p>5 Q 2000?</p> <p>6 A While I was on Tribal Council. But if you want</p> <p>7 to talk Minerals Counsel, as soon as I took office.</p> <p>8 Q All right. And what was the thrust, if you</p> <p>9 will, of your conversations with the BIA about permitting</p> <p>10 and leases?</p> <p>11 A Expedite all efforts.</p> <p>12 Q All right. Is that, as a technical matter,</p> <p>13 that's because requests for leases and permits have to go</p> <p>14 to the BIA first before the OMC has an opportunity to</p> <p>15 approve?</p> <p>16 MR. PIPESTEM: Objection. I'm going to direct</p> <p>17 the witness not to answer to the extent that question</p> <p>18 leads to information that's prohibited by court order in</p> <p>19 this case where the Court has determined that matters</p> <p>20 before the filing of this case are irrelevant. Those</p> <p>21 communications are not properly before the Court.</p> <p>22 MR. McCORMACK: Mr. Court Reporter, could you</p> <p>23 read back my question, please?</p> <p>24 THE COURT REPORTER: Is that, as a technical</p> <p>25 matter, that's because requests for leases and permits</p>	<p>Page 33</p> <p>1 questions related to communications that occurred before</p> <p>2 the filing of this lawsuit related to the scope of this</p> <p>3 case.</p> <p>4 Q (BY MR. McCORMACK) Well, let me ask you this.</p> <p>5 I guess I'm just trying to find out if they occurred, not</p> <p>6 necessarily what the subject matter of them was. I think</p> <p>7 what you said, Mr. Waller, was that as soon as you got</p> <p>8 onto the Council in July of 2014 you were interacting with</p> <p>9 the BIA with regard to leases and permits. Is that fair?</p> <p>10 A Yes.</p> <p>11 Q And then I asked you whether we were talking</p> <p>12 about 226 leases and permits or something else, and you</p> <p>13 said, I think, all of the above. But let me understand</p> <p>14 exactly what that means. So those communications involved</p> <p>15 226 leases and permits, if you will; is that fair?</p> <p>16 A Yes.</p> <p>17 Q Did they also involve 211 and 214 permits and</p> <p>18 leases respectively? Is that fair?</p> <p>19 A Yes.</p> <p>20 Q And since you've been on the council in July of</p> <p>21 2014, have the number of 214 and 211 leases and permits</p> <p>22 and their consideration by the BIA and the OMC increased?</p> <p>23 MR. PIPESTEM: Objection. I'm instructing the</p> <p>24 witness not to answer the question as it relates to the</p> <p>25 time between when he was elected on July 18, 2014 and the</p>

<p>Page 34</p> <p>1 filing of this lawsuit on November 21, 2014.</p> <p>2 If you know the answer to the question after</p> <p>3 that time, Chairman Waller, you may answer.</p> <p>4 A Yes.</p> <p>5 Q (BY MR. McCORMACK) So I'll ask the question</p> <p>6 again, but I think I at least have the answer for the</p> <p>7 period November forward. That from the period of</p> <p>8 November 2014 forward there has been an increase in the</p> <p>9 number of 2011 permits and 2014 leases that have been</p> <p>10 considered by the BIA and thus considered by the OMC; is</p> <p>11 that fair?</p> <p>12 MR. PIPESTEM: Objection. Assumes facts not in</p> <p>13 evidence.</p> <p>14 MR. McCORMACK: That's why I'm asking this</p> <p>15 witness.</p> <p>16 Q (BY MR. McCORMACK) You can answer the question.</p> <p>17 That was a form objection.</p> <p>18 A I don't have those numbers in front of me.</p> <p>19 Q Well, but what's your recollection and</p> <p>20 understanding? I'm going to walk through all of them a</p> <p>21 little later, and I know there's a lot more of them now</p> <p>22 than there used to be, so my sense is that there's a lot</p> <p>23 more. Did I get that wrong?</p> <p>24 A No.</p> <p>25 MR. PIPESTEM: Objection. Assuming facts not in</p>	<p>Page 36</p> <p>1 Q Okay. What's your sense of it? You're there</p> <p>2 every day.</p> <p>3 A Yes.</p> <p>4 Q All right. And has that -- that has been a</p> <p>5 subject matter of discussions between you personally and</p> <p>6 the BIA in the period July 2014 forward, that is, paying</p> <p>7 closer attention to the 214 and 211 leases and permits?</p> <p>8 A It's been the same process.</p> <p>9 Q So it's -- well, did you have -- you had</p> <p>10 conversations with them prior to being on the OMC on that</p> <p>11 subject matter?</p> <p>12 A No.</p> <p>13 Q All right. So since you've been on the OMC,</p> <p>14 that has been a subject of conversations between you and</p> <p>15 the BIA, which is closer attention to 214 and 211 leases</p> <p>16 and permits, yes?</p> <p>17 A After directed by my council.</p> <p>18 Q Right.</p> <p>19 MR. McCORMACK: Let me ask the court reporter to</p> <p>20 turn to tab E, which is a March 16, 2021 interview of</p> <p>21 Mr. Waller. I'll mark this as 156.</p> <p>22 If you'll turn to the second page,</p> <p>23 Mr. Concierge, it's going to be -- and blow up the section</p> <p>24 of this interview that begins with Ms. Herrera's</p> <p>25 statements, that's why there is concern here. It's the</p>
<p>Page 35</p> <p>1 evidence.</p> <p>2 Q (BY MR. McCORMACK) Your answer was no, I didn't</p> <p>3 get it wrong? I think I'll try it again. Which is</p> <p>4 after -- well, let me put it this way.</p> <p>5 Was one of the things that you focused on after</p> <p>6 you got on the Minerals Council in July 2014 paying closer</p> <p>7 attention to 2014 -- excuse me, to two thousand -- my</p> <p>8 apologies, Mr. Waller.</p> <p>9 After you got on the Minerals Council in July of</p> <p>10 2014, is it fair to say that one of the things that you</p> <p>11 focused on was 2014 leases and 2011 permits on a</p> <p>12 go-forward basis at the BIA at the OMC for the Osage</p> <p>13 Mineral Estate?</p> <p>14 A One of my many.</p> <p>15 Q All right. And again, from your observations</p> <p>16 and from the leadership that you brought to the OMC, is it</p> <p>17 your view that that has now happened, that there has been</p> <p>18 more of a focus on two thousand -- excuse me, on 214 and</p> <p>19 211 leases and permits on the Osage Mineral Estate?</p> <p>20 A The focus is the same.</p> <p>21 Q Understood. Do you understand that there have</p> <p>22 been more of them since you have been on the OMC than</p> <p>23 before you were on the OMC?</p> <p>24 A I just don't have that number. I can only</p> <p>25 answer for what I have.</p>	<p>Page 37</p> <p>1 first time Herrera's name shows up. Keep that going all</p> <p>2 the way down -- sorry, go back. Just want to take that</p> <p>3 middle section from Herrera all the way down to the second</p> <p>4 time, down to the Herrera, Waller, Herrera, Waller and</p> <p>5 then Herrera, put all that up. If I've confused you, let</p> <p>6 me know.</p> <p>7 THE VIDEOGRAPHER: One second. I'm trying to</p> <p>8 get this figured out here.</p> <p>9 Q (BY MR. McCORMACK) There you go. Mr. Waller,</p> <p>10 do you remember having an interview with Allison Herrera?</p> <p>11 (WHEREUPON, Exhibit 156 was marked for</p> <p>12 identification.)</p> <p>13 A Yes.</p> <p>14 Q And this was -- you've seen this report before</p> <p>15 of the interview?</p> <p>16 A Yes.</p> <p>17 Q Among other things, she was talking to you about</p> <p>18 Deb Haaland's appointment as the Interior secretary and</p> <p>19 her record opposing the fossil fuel industry. Do you</p> <p>20 remember that?</p> <p>21 A Yes.</p> <p>22 Q Then she goes on to ask the question, and you</p> <p>23 see the first one there it says, referring to Deb Haaland,</p> <p>24 "She did make a point at her confirmation hearing that the</p> <p>25 ban on oil and gas leases doesn't extend to tribal lands."</p>

<p>Page 38</p> <p>1 Did you see that?</p> <p>2 A Yes.</p> <p>3 Q Did the OMC reach out to the Interior secretary</p> <p>4 to reinforce the notion that the Osage Nation was opposed</p> <p>5 to any ban on oil and gas exploration on tribal lands?</p> <p>6 A We did reach out.</p> <p>7 Q All right. And did either the secretary or</p> <p>8 people working with her confirm for you that she does not</p> <p>9 believe that any ban on oil and gas would extend to tribal</p> <p>10 lands?</p> <p>11 A To the reservation, yes.</p> <p>12 Q All right. Go down to the next question. It</p> <p>13 says, Ms. Herrera says, "Waller is responsible for</p> <p>14 maximizing profits for Osage Nation shareholders, so he</p> <p>15 needs to get oil companies to come in and lease their</p> <p>16 land." Do you agree with that?</p> <p>17 A Yes.</p> <p>18 Q You also, she says about you, that you think</p> <p>19 that "Haaland will be good because she understands tribal</p> <p>20 sovereignty." Do you see that?</p> <p>21 A Yes.</p> <p>22 Q And that's a fair statement? She said fairly</p> <p>23 what you had said to her?</p> <p>24 A Yes.</p> <p>25 Q And then you said, "I think that she will</p>	<p>Page 40</p> <p>1 If I ever get that wrong, correct me. I think we're at</p> <p>2 157. Let me have him turn to tab 64. Tab 64 is a</p> <p>3 July 24, 2014 article entitled "Why Oklahoma's Wind Energy</p> <p>4 Future Could be Shaped by Osage County." Let me ask you</p> <p>5 to go to the second page.</p> <p>6 Q (BY MR. McCORMACK) Mr. Waller, have you seen</p> <p>7 this article before? I know you're in it, but I was</p> <p>8 curious if you'd seen it before?</p> <p>9 (WHEREUPON, Exhibit 157 was marked for</p> <p>10 identification.)</p> <p>11 A Yes.</p> <p>12 Q All right. And this article came out within a</p> <p>13 week of you becoming the Osage Minerals Council's</p> <p>14 chairman, yes?</p> <p>15 A Yes.</p> <p>16 Q All right. And let me -- do you remember</p> <p>17 speaking to the reporter with regard to this particular</p> <p>18 subject matter and what was on that reporter's mind?</p> <p>19 A Yes.</p> <p>20 Q What were you being asked, and what was your</p> <p>21 point in the conversations that you had with the reporter?</p> <p>22 A On the consideration.</p> <p>23 Q I'm sorry, I didn't understand that.</p> <p>24 A Just on the consideration of what are our</p> <p>25 options in our reservation.</p>
<p>Page 39</p> <p>1 identify that I speak on behalf of the fossil fuel tribe,</p> <p>2 the oldest." Do you see that?</p> <p>3 A I am.</p> <p>4 Q So you referred to the Osage Nation as the</p> <p>5 fossil fuel tribe; is that right?</p> <p>6 A Tribe, yes.</p> <p>7 Q Why did you use that nomenclature?</p> <p>8 A Because in 1896 we developed the fossil fuel for</p> <p>9 the Allotment Act.</p> <p>10 Q Meaning you have the oldest mineral rights of</p> <p>11 any tribe? Is that what you mean by that?</p> <p>12 A And even more. We had to buy our reservation.</p> <p>13 Q Right. By fossil fuel tribe, I think you're</p> <p>14 trying to get across that it's very important that oil and</p> <p>15 gas exploration for the tribe is quite important, yes?</p> <p>16 A For the shareholder it's everything.</p> <p>17 Q For the headright holders, correct?</p> <p>18 A That I represent, yes, sir. This is the</p> <p>19 chairman talking.</p> <p>20 Q Right. Do you often refer to the Osage</p> <p>21 headright holders or the Osage Nation as the fossil fuel</p> <p>22 tribe?</p> <p>23 A My representation is, yes.</p> <p>24 MR. McCORMACK: Let me ask the court reporter to</p> <p>25 mark as the next exhibit in order, which I believe is 157.</p>	<p>Page 41</p> <p>1 Q All right. Let's go to the second page of this</p> <p>2 document which has been marked as 157, which is -- and</p> <p>3 let's go to the third paragraph starting with the words</p> <p>4 "wind energy" and let's blow that up so all of us with</p> <p>5 aged eyes can see it.</p> <p>6 A Thank you. My age is sneaking up on me here.</p> <p>7 Q Gentlemen of a certain age. And it says, "Wind</p> <p>8 energy is becoming a big deal in Oklahoma. Last year,</p> <p>9 this state was the country's fourth largest wind power</p> <p>10 producer, data from the US Energy Information Agency show,</p> <p>11 and while many Oklahomans are excited about the promises</p> <p>12 of wind energy, fewer carbon emissions and regular royalty</p> <p>13 checks for leased land, to name a few, the industry is</p> <p>14 facing entrenched resistance." Do you remember having</p> <p>15 conversations of that nature or being mindful of those</p> <p>16 themes in this time frame, July of 2014, when you spoke to</p> <p>17 the reporter that wrote this article?</p> <p>18 A Yes.</p> <p>19 Q Do you understand today what role Oklahoma plays</p> <p>20 in wind energy in terms of the production of wind power in</p> <p>21 Oklahoma relative to the rest of the country?</p> <p>22 A Yes.</p> <p>23 Q Do you understand that that's a growing industry</p> <p>24 in the country, in Oklahoma in particular?</p> <p>25 A I'm only worried about my reservation.</p>

<p>Page 42</p> <p>1 Q Of course, and I understand that. But my</p> <p>2 question is do you understand that it's a growing sector</p> <p>3 in the United States generally and in Oklahoma</p> <p>4 specifically, that is, the wind generation and renewables</p> <p>5 generation?</p> <p>6 MR. PIPESTEM: Objection. Compound question.</p> <p>7 Q (BY MR. McCORMACK) You can answer.</p> <p>8 A Yes.</p> <p>9 MR. McCORMACK: All right. Let me now go two</p> <p>10 pages forward, and there's a nice picture of you there,</p> <p>11 and we can find that picture. Next page. That's not him.</p> <p>12 There he is. If you'll blow up the three paragraphs</p> <p>13 underneath the picture of Mr. Waller.</p> <p>14 Q (BY MR. McCORMACK) You were a little younger</p> <p>15 then, Mr. Waller.</p> <p>16 A You don't know how bad you hurt me then.</p> <p>17 Q The picture on my website is probably just as</p> <p>18 old, but anyway. Okay. Now, the first paragraph says</p> <p>19 "The Osage Nation has objected to wind energy projects on</p> <p>20 the grounds that construction could unearth and disturb</p> <p>21 native remains and artifacts and that spinning turbine</p> <p>22 blades could kill bald eagles." Do you see that?</p> <p>23 A Yes.</p> <p>24 Q We'll get into that later because we've seen</p> <p>25 that's actually been pressed by the Osage Minerals Council</p>	<p>Page 44</p> <p>1 Q All right. So is it fair to say that at least</p> <p>2 in this article you're saying you don't have a generalized</p> <p>3 opposition to alternate energy or anything of the fact; is</p> <p>4 that fair?</p> <p>5 A And I don't.</p> <p>6 Q All right. But what you say is the site is the</p> <p>7 problem. What do you mean by the site in this time frame</p> <p>8 July of 2014?</p> <p>9 A If we had had consideration --</p> <p>10 MR. PIPESTEM: Objection. I'm going to direct</p> <p>11 the witness not to answer the question as it releases</p> <p>12 specific facts of this case. That was a time before this</p> <p>13 litigation was initiated, and the Court has ruled that</p> <p>14 testimony irrelevant. So I'm instructing the witness not</p> <p>15 to answer that question.</p> <p>16 Q (BY MR. McCORMACK) All right. Let me ask this</p> <p>17 question, which is I think you just said you don't have a</p> <p>18 problem with alternate energy; is that fair?</p> <p>19 A Yes.</p> <p>20 Q All right. But what you have, at least</p> <p>21 theoretically then and today, is a problem with the</p> <p>22 location of alternate energy; is that fair?</p> <p>23 MR. PIPESTEM: Objection. To the extent that</p> <p>24 question involves a statement of facts related to the time</p> <p>25 period before this litigation was initiated, which that</p>
<p>Page 43</p> <p>1 and the Nation. But let me get to the next sentence.</p> <p>2 "But there's another element at work here: Oil." Do you</p> <p>3 see that?</p> <p>4 A Yes, our oil.</p> <p>5 Q This is now 2014. It says, "Members of the</p> <p>6 Osage Nation own most of the mineral rights in Osage</p> <p>7 County." I would say they own all the mineral rights, but</p> <p>8 be that as it may. "The council that represents those</p> <p>9 interests is worried that wind farms, their large</p> <p>10 footprints as well as their powerlines and associated</p> <p>11 electrical equipment, could interfere with oil and gas</p> <p>12 development." Do you see that?</p> <p>13 A Yes.</p> <p>14 Q Is that what you told this reporter at this</p> <p>15 time, that you were concerned about wind farms conceivably</p> <p>16 interfering with oil and gas development?</p> <p>17 A Yes.</p> <p>18 Q Then they have a quote here. It says, "The site</p> <p>19 is the problem," says Everett Waller, "it's not the</p> <p>20 alternate energy or the wind energy, anything of the fact.</p> <p>21 I have a job as chairman of the Minerals Council to</p> <p>22 protect my shareholders. This is a business. We're in</p> <p>23 the oil business." Do you remember saying that at about</p> <p>24 this time, July 2014?</p> <p>25 A Yes.</p>	<p>Page 45</p> <p>1 question did, I'm instructing the witness not to answer</p> <p>2 the question.</p> <p>3 MR. McCORMACK: That question involved more than</p> <p>4 the time frame that you're referring to, Counsel.</p> <p>5 MR. PIPESTEM: That's exactly right.</p> <p>6 MR. McCORMACK: Well, I'm going to ask it</p> <p>7 anyway, and you can instruct away.</p> <p>8 Q (BY MR. McCORMACK) But when you said the site</p> <p>9 is the problem in this 2014 article, what were you</p> <p>10 referring to? Do you mean Osage County, or do you mean</p> <p>11 the 8400-acre wind farm project that was underway at the</p> <p>12 time?</p> <p>13 MR. PIPESTEM: Objection. I'm instructing the</p> <p>14 witness not to answer. The Court has ruled that before</p> <p>15 the initiation of this litigation that those</p> <p>16 communications and matters are irrelevant to this case.</p> <p>17 MR. McCORMACK: I may have missed that, Counsel.</p> <p>18 Did you instruct him not to answer?</p> <p>19 MR. PIPESTEM: I'm instructing the witness not</p> <p>20 to answer it again.</p> <p>21 MR. McCORMACK: Okay.</p> <p>22 Q (BY MR. McCORMACK) At the time of this</p> <p>23 interview in 2014, you were aware that there was already a</p> <p>24 significant wind farm being built in Osage County,</p> <p>25 correct?</p>

<p style="text-align: right;">Page 46</p> <p>1 A Yes.</p> <p>2 Q That wind farm was the one that was built by my</p> <p>3 clients, essentially, yes?</p> <p>4 MR. PIPESTEM: Objection. The same objection.</p> <p>5 The date of this article, I believe, is -- Counsel, it</p> <p>6 looks like the date is 7/24/2014?</p> <p>7 MR. McCORMACK: I think that's right.</p> <p>8 MR. PIPESTEM: Which is before the time this</p> <p>9 litigation was initiated. I'm instructing the witness not</p> <p>10 to answer that question for the reasons stated before.</p> <p>11 Q (BY MR. McCORMACK) Well, let's move forward in</p> <p>12 time to November 2014. Did your opinion about, that you</p> <p>13 expressed in July of 2014 about not having a problem with</p> <p>14 alternate energy or wind energy or anything to the fact,</p> <p>15 did that opinion continue into late 2014?</p> <p>16 MR. PIPESTEM: Objection. For the reasons I</p> <p>17 stated before, I'm instructing the witness not to answer</p> <p>18 to the extent that question refers to opinions and beliefs</p> <p>19 prior to the initiation of this litigation that's specific</p> <p>20 to this litigation.</p> <p>21 MR. McCORMACK: I thought I had avoided that</p> <p>22 problem.</p> <p>23 Q (BY MR. McCORMACK) So let's say as of</p> <p>24 December 1, 2014, had your view as expressed in this</p> <p>25 July 2014 article that alternate energy and wind energy</p>	<p style="text-align: right;">Page 48</p> <p>1 A Yes.</p> <p>2 Q How has it changed?</p> <p>3 A No, it has not changed.</p> <p>4 Q Oh, it has not changed, all right.</p> <p>5 A I'm just trying to hear exactly how you're</p> <p>6 wording the question.</p> <p>7 Q Fair enough, and if I confused you, my</p> <p>8 apologies.</p> <p>9 Have you -- you haven't had a significant change</p> <p>10 in opinion about the potential use or value of renewable</p> <p>11 wind energy. Your issue is where it's going to be put; is</p> <p>12 that fair?</p> <p>13 A One of my issues, yes.</p> <p>14 Q Okay, what's the other issues?</p> <p>15 A That it has to be vetted through my Osage</p> <p>16 Minerals Council.</p> <p>17 Q All right. And that is -- okay, we'll get to</p> <p>18 that issue later in the day, but your point being that</p> <p>19 anybody that wishes to develop a wind farm anywhere in</p> <p>20 Osage County, your view is that that needs to be vetted</p> <p>21 through the Osage Minerals Council; is that right?</p> <p>22 A Yes, sir.</p> <p>23 Q All right. When did that -- you said you</p> <p>24 changed your view. When did that view become part of the</p> <p>25 landscape, if you will?</p>
<p style="text-align: right;">Page 47</p> <p>1 was not something you opposed generally, but rather it was</p> <p>2 the siting of it that was the issue, did that opinion</p> <p>3 continue into December of 2014?</p> <p>4 MR. PIPESTEM: Objection. I'm instructing the</p> <p>5 witness not to answer for the same reasons. Counsel, to</p> <p>6 the extent you're -- I'll just leave it to that.</p> <p>7 Q (BY MR. McCORMACK) Well, in December of 2014</p> <p>8 did your opinion with regard -- has your opinion with</p> <p>9 regard to alternate energy or wind energy, did that shift</p> <p>10 from an opinion that you had held previously in 2014?</p> <p>11 MR. PIPESTEM: Objection. For the reasons I</p> <p>12 stated before, I'm instructing the witness not to answer</p> <p>13 that question.</p> <p>14 Q (BY MR. McCORMACK) Well, what's your view</p> <p>15 today? Do you have a problem with alternate energy or</p> <p>16 wind energy today, Mr. Waller?</p> <p>17 A No.</p> <p>18 Q All right. Has your opinion on that subject</p> <p>19 matter changed at any time between December 2014 and</p> <p>20 today?</p> <p>21 A No.</p> <p>22 Q All right. And is it your view that the issue</p> <p>23 that you have with wind power is the location of wind</p> <p>24 power, today or at anytime between December of 2014 and</p> <p>25 today?</p>	<p style="text-align: right;">Page 49</p> <p>1 MR. PIPESTEM: Objection. Mischaracterization</p> <p>2 of his answer.</p> <p>3 Q (BY MR. McCORMACK) Okay, correct me. I'm</p> <p>4 asking a question. You can correct me if I got it wrong,</p> <p>5 meaning you, Mr. Waller.</p> <p>6 A Repeat the question for me, please.</p> <p>7 Q Yes. I don't have the luxury of having the</p> <p>8 transcript here in front of me.</p> <p>9 MR. McCORMACK: It's fair enough, Counsel. If I</p> <p>10 got that wrong, let me fix it.</p> <p>11 Q (BY MR. McCORMACK) When did you develop the</p> <p>12 view that no wind farm can be built in Osage County</p> <p>13 without the vetting of the Osage Minerals Council?</p> <p>14 MR. PIPESTEM: Objection. To the extent that</p> <p>15 question requires the witness to discuss beliefs prior to</p> <p>16 the filing of this litigation, I'm instructing the witness</p> <p>17 not to answer. To the extent it's after the time of</p> <p>18 litigation in November 2014, witness, you may answer the</p> <p>19 question.</p> <p>20 Q (BY MR. McCORMACK) It's up to you, Mr. Waller.</p> <p>21 A I have the response of this quote that you're</p> <p>22 bringing up has not changed. If I had the opportunity to</p> <p>23 visit before this was handed to me as chairman, I think I</p> <p>24 could have gave my concerns better than than trying to</p> <p>25 answer it now.</p>

<p>Page 50</p> <p>1 Q I guess the question was you've now testified 2 that one of the issues that you view with regard to the 3 development of any wind farm in Osage County, Oklahoma 4 requires the vetting of the Osage Minerals Council, to use 5 your term. When did you first develop that view? 6 MR. PIPESTEM: Objection. To the extent that it 7 requires the deponent to provide facts that preexist the 8 filing of this Complaint, I'm instructing the witness not 9 to answer the question. 10 Q (BY MR. McCORMACK) Back to you, Mr. Waller. 11 MR. PIPESTEM: I'm instructing him not to answer 12 the question. 13 Q (BY MR. McCORMACK) Let me ask you another 14 question. You've now told me at least your current view, 15 and Counsel has not allowed me to ask you when you 16 developed it, but your current view is that no wind farm 17 can be built in Osage County without vetting of the Osage 18 Minerals Council. I think I got that right; is that 19 correct? 20 A Yes. 21 Q Why is that? 22 A That's how we do business. 23 Q But what is the -- what is the -- you understand 24 that there's surface right holders and then there's 25 mineral right holders. What is your view as to why it is</p>	<p>Page 52</p> <p>1 municipality, you're not established in the state of 2 Oklahoma. The situation here is that this is out on a 3 field in which I'm here to discuss its options, its 4 exploitation, and its leasing and permitting. 5 Q Let me unpack that if I can. What are the 6 reasons -- let me try it differently. 7 Does someone who wants to build a gas station in 8 Osage County, does that person have to have that project 9 vetted by the Osage Minerals Council, in your view, before 10 they can build a gas station? 11 A It's according to the easement. Are they in a 12 town location? Those are set aside by federal law. I 13 don't think it's necessary. But where it's not set aside 14 by federal law, you're in the reservation; you're going to 15 have to act like it. 16 Q I appreciate that clarification. So if someone 17 wants to build a gas station in the reservation anywhere 18 in Osage County, would, in your view, the Osage Minerals 19 Council need to vet the construction of that gas station? 20 A We have before. 21 Q Okay. Are there records of that? 22 A Skiatook Casino. 23 Q All right. But the Skiatook Casino is owned by 24 the Osage Nation, yes? 25 A Very happily say yes.</p>
<p>Page 51</p> <p>1 that the construction of a wind farm, for example, as 2 opposed to a convenience store or a school or something 3 else would necessarily require vetting by the Osage 4 Minerals Council? 5 A When it has an impact. 6 Q By impact, what do you mean? 7 A On the location. 8 Q An impact on the mineral rights? 9 A On the estate I'm here to protect. 10 Q All right. But exactly what impact do you mean? 11 Do you mean on the mineral rights or on some other issue? 12 A The one I was here for today is over the 13 shareholders' rights. 14 Q Well, we just established, I think, that your 15 view as the chairman of the Osage Minerals Council is that 16 any wind farm in Osage County requires vetting by the 17 Osage Minerals Council, and then I asked you why that was 18 and is it different for a wind farm than it might be for 19 the construction of a convenience store or a gas station 20 or an office building or a school? That was my question. 21 A If fits different criteria. 22 Q Okay. Tell me what those criteria are that it 23 fits such that you would have that view towards the 24 development of wind farms in Osage County? 25 A Because you're not established in a</p>	<p>Page 53</p> <p>1 Q Yes, I'd imagine. But the question I'm asking 2 for you is, is it your view that any construction project 3 that would take place on the reservation would require the 4 vetting of the Osage Minerals Council, any construction 5 project? 6 A I'd have to see what kind of footprint we're 7 talking about, what is the structure, what is going to be 8 the regulatory items which has to be brought in. 9 Q How would someone who wants to build that 10 construction project know what to look at to be able to 11 determine whether or not you believed or the Osage 12 Minerals Council believed that it would require the 13 vetting of the OMC to proceed? 14 MR. PIPESTEM: Objection. Compound. Please 15 answer. 16 A Yes, it falls under requirements of the Bureau 17 of Indian Affairs, Department of Interior. 18 Q (BY MR. McCORMACK) Well my question is -- 19 A The code. 20 Q Okay. What code are you referring to, 21 Mr. Waller? 22 A The 214 in this case. 23 Q All right. I guess I'm just trying to gauge 24 what your view of that is, which is, does it depend on how 25 big of a hole is being dug whether or not a person who</p>

<p>Page 54</p> <p>1 wants to build any construction project on the surface</p> <p>2 land of Osage -- of the Osage Nation needs to come to the</p> <p>3 Osage Minerals Council, in your view, to be vetted?</p> <p>4 MR. PIPESTEM: Objection. Compound question.</p> <p>5 Q (BY MR. McCORMACK) You can answer. There's a</p> <p>6 question pending, Mr. Waller. You can answer it.</p> <p>7 A If it's on the reservation, it needs to follow</p> <p>8 the federal criteria to proceed.</p> <p>9 Q I'm trying to find out, as the chairman of the</p> <p>10 OMC who's charged with the mineral estate, what is that</p> <p>11 criteria for someone who wants to build on Osage</p> <p>12 reservation a construction project, what is the criteria</p> <p>13 for deciding whether or not the Osage Minerals Council</p> <p>14 must vet that construction project?</p> <p>15 A If it's brought to our attention, then it falls</p> <p>16 under criteria of the 5000 square cubic yards. Once it</p> <p>17 encompasses more than that, the council cannot waive it.</p> <p>18 That has to go on to the permitting and leasing process by</p> <p>19 the federal government that represents us.</p> <p>20 Q So it depends on the size of the excavation</p> <p>21 that's being done, is that what you're --</p> <p>22 A Among other items.</p> <p>23 Q What are the other items?</p> <p>24 A Where is it located at?</p> <p>25 Q Osage Reservation.</p>	<p>Page 56</p> <p>1 Q When you say how much you're going to use of my</p> <p>2 property, can you tell me what you mean by that?</p> <p>3 A Borrowed material, rock, water.</p> <p>4 Q By use, what do you mean by use those materials?</p> <p>5 A The usage, we are looking at any possible sale</p> <p>6 effort. Once that triggers, the permit itself to give you</p> <p>7 the parameters of the lease itself on this sale through</p> <p>8 the Bureau of Indian Affairs.</p> <p>9 Q Do you know -- I mean, are you familiar with any</p> <p>10 ongoing construction projects in the Mineral Estate</p> <p>11 currently where a party who is constructing any building</p> <p>12 or any facility has not come to the OMC to be vetted?</p> <p>13 A It's not been brought to my attention, no.</p> <p>14 Q Do you assume that there are such projects?</p> <p>15 A I would be guessing at best.</p> <p>16 Q All right. But you live in Osage County, and</p> <p>17 you drive around in Osage County. You have a position --</p> <p>18 A Not much. I'm the chairman. You don't get to</p> <p>19 go to Walmart, you don't get to go get your gas.</p> <p>20 Q Yes, I've heard there's no Walmart in Osage</p> <p>21 County. But we know there are schools there. We know</p> <p>22 that there's buildings there, et cetera. Do you know --</p> <p>23 you don't know currently --</p> <p>24 A Yes, my shareholders helped build them.</p> <p>25 Q All right. Is there construction going on now</p>
<p>Page 55</p> <p>1 A Is it going to be setting on top of a trunk</p> <p>2 line? Is going to be setting on part of a Corps of</p> <p>3 Engineers process? Does it set in any kind of the County</p> <p>4 Commissioners water flood, water plain, floodplain? Those</p> <p>5 kinds of issues. I have to -- I have to look at each one</p> <p>6 specifically.</p> <p>7 Q What I'm trying to find out, if somebody wants</p> <p>8 to build a gas station on the Osage Reservation, what do</p> <p>9 they go look at to find out whether they have to come and</p> <p>10 be vetted by the OMC? That's what I'm trying to find out.</p> <p>11 A We would have to have that in request to the</p> <p>12 council to answer that.</p> <p>13 Q Does that mean anybody who's considering</p> <p>14 building a construction project on the Osage Reservation,</p> <p>15 is it your view that every single one of them has to come</p> <p>16 to the OMC to be vetted, or is there some subset that</p> <p>17 don't have to be vetted?</p> <p>18 A I think the criteria has already been set. The</p> <p>19 reservation has specified certain acreage, and the</p> <p>20 townships, right-of-ways that I give to ODOT, things of</p> <p>21 that nature, and that all has to fall in compliance.</p> <p>22 You're going to have to have an eight second review before</p> <p>23 you build this gas station on your turnouts, whatever</p> <p>24 those issues are. But mine is on the front end; it's how</p> <p>25 much are you going to use of my property.</p>	<p>Page 57</p> <p>1 that you're aware of in Osage County where the OMC has not</p> <p>2 vetted that construction?</p> <p>3 MR. PIPESTEM: Objection. Asked and answered.</p> <p>4 Q (BY MR. McCORMACK) I was hoping I might have</p> <p>5 refreshed your recollection, Mr. Waller. You can answer.</p> <p>6 A I don't know that answer.</p> <p>7 Q All right. Again, for someone who wants to</p> <p>8 build on -- withdrawn.</p> <p>9 I think the surface land ownership in Osage</p> <p>10 County is over 99 percent non-Osage Nation members. Is</p> <p>11 that an accurate statement?</p> <p>12 A No.</p> <p>13 Q No, all right, my apologies. Do you know what</p> <p>14 the percentage of ownership of the members of the Osage</p> <p>15 Nation are?</p> <p>16 A You'll have to ask Chief Standing Bear.</p> <p>17 Q All right. Any guesstimate that you have, a</p> <p>18 running tab?</p> <p>19 A I will not guess.</p> <p>20 Q All right. Is it -- but it could be 99 percent</p> <p>21 non-Osage Nation members, or you don't know? You don't</p> <p>22 know?</p> <p>23 A It's less.</p> <p>24 Q Okay. Is it your view that any surface</p> <p>25 landowner in Osage County if they want to construct a</p>

<p>Page 58</p> <p>1 project on their land must come to the Osage Minerals 2 Council to have that project vetted? 3 A No. 4 Q All right. I didn't think that would be your 5 view, but I wanted to know. So I wanted to know what is 6 the criteria that someone who wants to build needs to be 7 aware of so as not to run afoul of the Osage Minerals 8 Council's view of its right to vet? 9 A They should know that they run afoul when they 10 start selling it. 11 Q When they sell soil or minerals from the Estate? 12 A Correct. 13 Q I know, we'll go through them later, but I know 14 that the Department of Transportation and then various 15 companies that do gravel pit and dirt pit and mining in 16 than manner have received various permits and leasing over 17 the years. Are you familiar with any other criteria that 18 would be needed for a potential construction project to be 19 vetted by the OMC? 20 A Do I have the ODOT MOUs in place that help set 21 criteria? If I have that position on these other items 22 when you're asking about homeowners and things of that 23 nature, it's not leaving their property. 24 Q All right. 25 A And they're not generating profitability there.</p>	<p>Page 60</p> <p>1 Q Well, that's a good question. What is your -- 2 let me ask -- let me try to do it incrementally. 3 I may have asked this, and if I did I apologize, 4 Mr. Waller, sometimes I forget what I've asked. Are you 5 generally opposed to any wind project in Osage County 6 today? 7 A I think the task at hand is the 87 I have now. 8 I can't project on what the future entails. 9 Q Understood. But I think your -- we're going to 10 get into the minutes in a moment. A lot of people 11 expressed issues about wind farms, et cetera, and I'm 12 going to ask you your views of that, obviously. So I'm 13 asking them like as a precursor, if you will, what is your 14 generalized view about whether wind farms are welcome in 15 Osage County from your perspective? 16 MR. PIPESTEM: Objection. Asked and answered. 17 Q (BY MR. McCORMACK) You can answer it. 18 A I'd have to review the project before I'd ever 19 give that kind of answer. 20 Q Well -- 21 MR. ASHWORTH: We've been going -- sorry. 22 We've been going for over an hour and a half. Is this an 23 okay time for a break, or whenever you get to a stopping 24 point? 25 MR. McCORMACK: This is fine. This is good. I</p>
<p>Page 59</p> <p>1 They're trying to live and survive, just like my Osage 2 are, which is hard to do sometimes. 3 Q Understood. Let's go back to what I've marked 4 as Exhibit 157, which is the July 2014 interview that 5 we've been talking about. We've talked about this a 6 little bit. 7 MR. McCORMACK: Let's go back to the same 8 section, Mr. Concierge, that we talked about previously, 9 which is -- let's start with the section that begins with 10 "the site is the problem." It's on the page with the 11 picture of Mr. Waller. No, that's not it. There you go; 12 that's the one. The bottom paragraph on that page. 13 Q (BY MR. McCORMACK) Okay. We talked about the 14 first part of that, and I've drawn a lot of instructions 15 from your counsel for you not to answer questions, but let 16 me look at the last two sentences there. It says, "This 17 is this is a business. We're the oil business." Do you 18 see that? 19 A Yes. 20 Q Can you live with wind farms in Osage County so 21 long as those wind farms don't interfere with your ability 22 to drill for oil and gas in Osage County in your capacity 23 as chairman of the OMC? 24 A That's too broad. How many wind farms, 25 turbines?</p>	<p>Page 61</p> <p>1 appreciate your patience, Mr. Waller. What time you want 2 to come back? 3 THE WITNESS: I would enjoy just to move for 4 about five minutes. 5 MR. McCORMACK: Sure. 6 THE VIDEOGRAPHER: We're off the record at 7 11:38 a.m. 8 (BREAK FROM 11:38 TO 11:52. 9 THE VIDEOGRAPHER: Back on the record at 10 11:52 a.m. 11 Q (BY MR. McCORMACK) Thank you, Mr. Waller. Let 12 me ask you to look, I believe now we're at tab 158, 13 Exhibit 158. 14 MR. McCORMACK: I'd ask the concierge to go to 15 tab 86. This is a 2018 Osage Minerals Council candidate 16 interview for Mr. Waller. Let me have the concierge blow 17 up that last question and answer on Exhibit 158. Add the 18 question as well, which comes right before that paragraph. 19 Q (BY MR. McCORMACK) Okay, Mr. Waller, I know 20 that we have talked about you being elected to the Osage 21 Minerals Council in 2014, being selected as the chair of 22 the OMC in 2014, and this document suggests that you had 23 to run for reelection at some point in time. Is that a 24 fair conclusion on my part? 25 (WHEREUPON, Exhibit 158 was marked for</p>

<p>Page 62</p> <p>1 identification.)</p> <p>2 A It is.</p> <p>3 Q All right. What is the term of an OMC member?</p> <p>4 Is it two years? Four years? What is the term?</p> <p>5 A Four years, sir.</p> <p>6 Q So you had to re-run in 2018. I assume you got</p> <p>7 elected again?</p> <p>8 A Yes, I did.</p> <p>9 Q All right. Did you also, then, get selected as</p> <p>10 the chairman of the OMC at that time in 2018?</p> <p>11 A No.</p> <p>12 Q Okay. So you're now a member, but you're not</p> <p>13 the chairman starting in 2018?</p> <p>14 A July, yes.</p> <p>15 Q All right. Who is now the chairman of the OMC?</p> <p>16 A I am.</p> <p>17 Q Okay, so when did you get elected? There's</p> <p>18 something I missed. When did you get elected chairman</p> <p>19 again after the election in 2018?</p> <p>20 A After I buried my brother-in-law, Andrew Yates.</p> <p>21 Q I see. And when was that? My condolences.</p> <p>22 When was that?</p> <p>23 A In February.</p> <p>24 Q Of this year?</p> <p>25 A Correct.</p>	<p>Page 64</p> <p>1 chairman of the OMC in July 2014 and you're chairman</p> <p>2 today. When did you stop being chairman, and what</p> <p>3 happened in the interval?</p> <p>4 A 2018 Councilwoman Harlan was voted in as</p> <p>5 chairman.</p> <p>6 Q How long did she serve in that capacity?</p> <p>7 A I don't remember.</p> <p>8 Q Did Mr. Yates replace Councilwoman Harlan?</p> <p>9 A I did.</p> <p>10 Q When did Mr. Yates serve as chairman of the</p> <p>11 Osage Minerals Council?</p> <p>12 A I would have to go back in my records, but last</p> <p>13 year before his demise.</p> <p>14 Q All right. So it was Harlan, you, Yates, and</p> <p>15 then you again?</p> <p>16 A Yes.</p> <p>17 Q That all happened in the period after 2018?</p> <p>18 A Correct. To date.</p> <p>19 Q A generalized sense of how long Councilwoman</p> <p>20 Harlan was the OMC chair? Was it a year?</p> <p>21 A A year.</p> <p>22 Q A year. Do you know why she stepped down?</p> <p>23 A Personal reasons.</p> <p>24 Q All right. And then you were elected at that</p> <p>25 time, so that would've been maybe 2019?</p>
<p>Page 63</p> <p>1 Q All right. So -- and that was a question on my</p> <p>2 mind. I didn't know he was your brother-in-law. My</p> <p>3 condolences, as I said. I know that you were the chairman</p> <p>4 from July of 2014 until, apparently, July of 2018, and</p> <p>5 then Mr. Yates was the chairman from 2018 to earlier this</p> <p>6 year, February of 2021, and now you've returned as the</p> <p>7 chairman of the OMC. Do I have that chronology right?</p> <p>8 A No.</p> <p>9 Q Okay, then I won't even try. Why don't you give</p> <p>10 me the chronology?</p> <p>11 A 2018?</p> <p>12 Q Well, you were chairman --</p> <p>13 A Councilwoman Harlan was selected, then I was</p> <p>14 brought in, don't have the data in front of me, to be</p> <p>15 re-seated as chairman, and then we had a vote, and then</p> <p>16 until February Councilman Yates was chairman.</p> <p>17 Q Okay, I apologize. I'm going to do this a</p> <p>18 little more methodical. You were originally elected in</p> <p>19 July 2014 to the council and then became chairman at that</p> <p>20 time. I think I've got that right so far, yes?</p> <p>21 A Yes.</p> <p>22 Q And then you remained on the council and were</p> <p>23 chair until when?</p> <p>24 A Until we took office OMC 4.</p> <p>25 Q I'm sorry, I didn't understand that. You became</p>	<p>Page 65</p> <p>1 A Probably.</p> <p>2 Q And you stayed in that role until Mr. Yates took</p> <p>3 over, and I apologize if I asked, but when did he take</p> <p>4 over that role?</p> <p>5 A I believe in 2019 was his electoral. I can't</p> <p>6 tell you which month. We handle a lot of stuff. He</p> <p>7 served until February, and then I was elected to fill the</p> <p>8 position.</p> <p>9 Q All right. And now you've been in the role</p> <p>10 since -- well, we talked about when you were in it before,</p> <p>11 but you're currently the chairman of the Osage Minerals</p> <p>12 Council, and that's been the case since the time of the</p> <p>13 demise of your relation, and that was in February of this</p> <p>14 year?</p> <p>15 A Correct.</p> <p>16 Q All right, thank you for the chronology. I was</p> <p>17 trying to figure that out from the minutes and couldn't</p> <p>18 get it, so I appreciate that.</p> <p>19 Let me turn back to now what I've marked, I</p> <p>20 believe, as Exhibit 158, and this was an Osage Minerals</p> <p>21 Council candidate interview. Do you remember giving that</p> <p>22 interview?</p> <p>23 A I sure do.</p> <p>24 Q All right. Let me ask you to go to the last</p> <p>25 paragraph here, starting with the line that says, it's</p>

<p>Page 68</p> <p>1 like, I think, three or four sentences into the last</p> <p>2 paragraph. It says, "I have not spent a day without being</p> <p>3 in federal court, and as you know well the federal court</p> <p>4 case that we have now is in the Supreme Court of the</p> <p>5 United States stating that you cannot come to our</p> <p>6 reservation without dealing with us, and a foreign country</p> <p>7 can go to the White House and get a category exclusions,</p> <p>8 and then we get the capital gains process going to the</p> <p>9 buyback on this energy." That case that you're referring</p> <p>10 to is this case, is the Enel Green Power case and the</p> <p>11 Osage Minerals Council and US Government case, as far as I</p> <p>12 understand; is that right?</p> <p>13 A The case, yes, I was in.</p> <p>14 Q All right. When you're saying you have not</p> <p>15 spent a day without being in federal court, you're talking</p> <p>16 about relative to this case that while you've been on the</p> <p>17 OMC there has been litigation pending between the OMC, the</p> <p>18 government, and Enel Power? Is that what you were</p> <p>19 intending to say there?</p> <p>20 A And others.</p> <p>21 Q And others, all right, all right. It goes on to</p> <p>22 say, "And I'm okay with nonrenewable, because that's what</p> <p>23 I do. But on the renewable, I'm okay with that too, but</p> <p>24 just don't put it in my best oilfield." Do you see that?</p> <p>25 A Well, I stick by that.</p>	<p>Page 68</p> <p>1 Q All right. So it's not in the 8400 acres?</p> <p>2 A It's not in the North Burbank, no, sir.</p> <p>3 Q All right. So the best oilfield is not on the</p> <p>4 8400 acres, right?</p> <p>5 A I don't know that yet. I haven't drilled all of</p> <p>6 it.</p> <p>7 Q Well --</p> <p>8 A I answered it's not on the Burbank Unit.</p> <p>9 Q Right. Well, the reason you say just don't put</p> <p>10 it on my best oilfield is because you don't want the wind</p> <p>11 farm to be interfering with potential oil and gas</p> <p>12 exploration and development on 8400 acres where it does</p> <p>13 sit?</p> <p>14 A Along with the process of development of the</p> <p>15 oilfield, my location, the lease, things of that nature.</p> <p>16 Q Okay. Let me pull that apart a little bit. The</p> <p>17 best oilfield is the Burbank Oilfield, and that is not, at</p> <p>18 least traditionally, on the 8400 acres; is that fair?</p> <p>19 A Correct.</p> <p>20 Q And the Burbank Oilfield is northeast of the</p> <p>21 8400 acres. Do you know how far?</p> <p>22 A Northwest. It adjoins your next lessee.</p> <p>23 Q All right. Is the Burbank Field, if you will,</p> <p>24 the one where the most oil wells have been drilled in the</p> <p>25 Osage Mineral Estate historically?</p>
<p>Page 67</p> <p>1 Q All right. When you say "just don't put it in</p> <p>2 my best oilfield," what are you referring to?</p> <p>3 A Location.</p> <p>4 Q But where is the best oilfield in Osage County?</p> <p>5 A Anywhere that I act as representative of the</p> <p>6 shareholder.</p> <p>7 Q When you say just don't put it in my best</p> <p>8 oilfield, do you mean just don't put it anywhere in Osage</p> <p>9 County?</p> <p>10 A No, sir.</p> <p>11 Q Okay, so what do you mean by my best oilfield?</p> <p>12 A You're sitting next to the largest reservoir in</p> <p>13 the nation.</p> <p>14 Q When you say "you're sitting next to the largest</p> <p>15 reservoir in the Nation," who is your and where are we</p> <p>16 sitting?</p> <p>17 A We are sitting on the Osage Reservation.</p> <p>18 Specifically your turbines are sitting right next to the</p> <p>19 most prolific field that we've had in our history.</p> <p>20 Q Okay. Is that the Burbank Field?</p> <p>21 A Correct.</p> <p>22 Q Where is the Burbank Field relative to the</p> <p>23 8400 acres that are part of the lease hold that the wind</p> <p>24 farm is operating on?</p> <p>25 A Northwest of you, sir.</p>	<p>Page 69</p> <p>1 A Yes, sir, every 330 feet, unless designated by</p> <p>2 superintendent of the Osage.</p> <p>3 Q All right. That remains today the most prolific</p> <p>4 of the oil fields in the Osage Nation, if you will?</p> <p>5 A Yes.</p> <p>6 Q And do you know how many wells are currently</p> <p>7 operating on the 8400 acres that is the subject of the</p> <p>8 lease for this wind farm?</p> <p>9 A It's only under the (unintelligible) and it's</p> <p>10 not numbered or drilled to near that extent.</p> <p>11 Q Well, is there any new drilling going on on the</p> <p>12 8400 acres?</p> <p>13 A Not at this time.</p> <p>14 Q Is there any new drilling taking place in the</p> <p>15 Burbank Field northeast of the 8400 acres?</p> <p>16 A All of the Burbank, or the adjoining acreage?</p> <p>17 Q All the Burbank.</p> <p>18 A Yes.</p> <p>19 Q All right. Is there any in the adjoining</p> <p>20 acreage?</p> <p>21 A Yes.</p> <p>22 Q All right. So is that the most active area, the</p> <p>23 Burbank Field, if you will?</p> <p>24 A Yes.</p> <p>25 Q What percentage of the revenue generated by oil</p>

<p>Page 70</p> <p>1 and gas in Osage County for the Osage Nation is generated</p> <p>2 by the Burbank Field, to your understanding?</p> <p>3 A Close to 40 percent and improving.</p> <p>4 Q Okay. There's active exploration going on on</p> <p>5 that site today, yes?</p> <p>6 A They are completing their CO2 units, so yes,</p> <p>7 they are plugging and they've added new compressors to</p> <p>8 take care of their flood. They'll probably reopen some</p> <p>9 old holes as criteria allows.</p> <p>10 Q And so I think you said there's a well every</p> <p>11 300 feet in the Burbank Field. What is the acreage, best</p> <p>12 guesstimate, of the Burbank Field, if you will, that is</p> <p>13 being developed as you described?</p> <p>14 A I don't know the exact number at this time. I'd</p> <p>15 have to look it up.</p> <p>16 Q Is it bigger than 8400 acres, less than 8400</p> <p>17 acres, or you don't have any idea?</p> <p>18 A It's less.</p> <p>19 Q Less. Meaningfully less, or not so much?</p> <p>20 A I'll just stay with it's less.</p> <p>21 MR. PIPESTEM: Objection. Compound.</p> <p>22 Q (BY MR. McCORMACK) Okay. Is there any</p> <p>23 commercial development or any buildings on the property</p> <p>24 that you've described that constitutes the Burbank Field</p> <p>25 other than oil and gas wells?</p>	<p>Page 72</p> <p>1 brought to the council, we would've had that information</p> <p>2 to make our decision.</p> <p>3 Q The land ownership, you mean?</p> <p>4 A Yes.</p> <p>5 Q All right. Are you familiar with the history of</p> <p>6 oil production on the 8400 acres generally?</p> <p>7 A As a commoner, yes. I don't have an engineering</p> <p>8 degree.</p> <p>9 Q I apologize, I'm trying to be thorough. I may</p> <p>10 have asked you this, but there are no current -- let me</p> <p>11 pull back.</p> <p>12 On the Burbank Oilfield that we're talking</p> <p>13 about, are they doing traditional drilling and then also</p> <p>14 fracking, or are they doing something else?</p> <p>15 A It's all under the traditional vertical element.</p> <p>16 Q Right. Are there plans to do fracking in that</p> <p>17 field or any other field that you know of?</p> <p>18 A They have not given me their program to answer</p> <p>19 that.</p> <p>20 Q All right. In the Burbank Field who are the</p> <p>21 primary lessees who are bringing up the oil and the gas</p> <p>22 for the Osage Nation?</p> <p>23 A Perdure.</p> <p>24 Q So there's one, Perdure?</p> <p>25 A Yes, the field itself.</p>
<p>Page 71</p> <p>1 MR. PIPESTEM: Objection. Compound question.</p> <p>2 Q (BY MR. McCORMACK) You can answer.</p> <p>3 A Not to my knowledge.</p> <p>4 Q Have you been out to the Burbank Field?</p> <p>5 A Yes.</p> <p>6 Q Have you been to the 8400 acres that's the</p> <p>7 subject of the wind farm?</p> <p>8 A I drove by it, yes.</p> <p>9 Q Have you -- you drove by it. Have you ever been</p> <p>10 on the actual property itself, the 8400 acres?</p> <p>11 A No, that would be trespassing without having the</p> <p>12 authority of the landowner.</p> <p>13 Q Understood. You envisioned my next question.</p> <p>14 Have you ever spoken to any of the landowners who own the</p> <p>15 8400 acres relative to the wind farm?</p> <p>16 A I have not.</p> <p>17 Q Do you know who they are?</p> <p>18 A I don't have the list, no.</p> <p>19 Q Do you know --</p> <p>20 A You can tell me.</p> <p>21 Q Well, we'll get to that, but do you have -- do</p> <p>22 you have any knowledge as to whether or not the</p> <p>23 landholders are members of the Osage Nation?</p> <p>24 A Not at this time. I wasn't permitting the</p> <p>25 event. I don't have that. If the project had been</p>	<p>Page 73</p> <p>1 Q All right. You had talked about the Burbank</p> <p>2 Field as being one that could be responsible for as much</p> <p>3 as 40 percent of the Osage mineral royalties. Do you know</p> <p>4 what percentage of the mineral royalties for Osage Nation</p> <p>5 come out of the 8400 acres that are subject to the land</p> <p>6 for the wind farm?</p> <p>7 A No, I've not looked that up.</p> <p>8 Q All right. And I think you said there's no</p> <p>9 current exploration going on on that 8400 acres; is that</p> <p>10 right?</p> <p>11 A To the best of my knowledge. I have not seen</p> <p>12 the drilling permit request.</p> <p>13 Q Do you know whether there are operating rigs on</p> <p>14 the property itself, the 8400 acres, as we sit here today?</p> <p>15 A As a drilling unit or a workover?</p> <p>16 Q Well, as any production of oil on the property</p> <p>17 from prior wells?</p> <p>18 A Not to my knowledge.</p> <p>19 Q All right. So does that mean there's no</p> <p>20 royalties from oil and gas currently coming from the</p> <p>21 8400 acres that serves as the location of this wind farm</p> <p>22 that we're litigating about?</p> <p>23 A It would be under the leases held by production.</p> <p>24 Q I'm sorry, I don't know what that means.</p> <p>25 A That you have oil wells that are going up and</p>

<p>Page 74</p> <p>1 now that have been leased and permitted. Those are the</p> <p>2 only ones that we will receive royalty through the bureau</p> <p>3 trust fund administration.</p> <p>4 Q Okay. Again, just so I can understand it,</p> <p>5 there's no current drilling going on on the 8400 acres</p> <p>6 today, and I think you told me that you were unaware of</p> <p>7 whether or not any oil is actually being produced from the</p> <p>8 8400 acres. Did I get that right?</p> <p>9 A No.</p> <p>10 Q Okay, so maybe I got the second piece wrong.</p> <p>11 There is no drilling going on there now; that's right,</p> <p>12 isn't it?</p> <p>13 A Yes.</p> <p>14 Q And then my question was what production is</p> <p>15 coming off the 8400 acres now, to your understanding?</p> <p>16 A The leases that are held by production, those</p> <p>17 are the ones that we are receiving the royalty through.</p> <p>18 Q Okay. What would I look at to see what</p> <p>19 percentage of the Osage Nation's collective royalty is</p> <p>20 coming out of that 8400 acres?</p> <p>21 A I'm not for sure you'll be privy to that</p> <p>22 information from my shareholders.</p> <p>23 Q Understood. I don't have it currently. I may</p> <p>24 or may not have the right to it. I think I might have the</p> <p>25 right to it, but I needn't quarrel with you on that</p>	<p>Page 75</p> <p>1 being paid to the Osage Nation; is that fair?</p> <p>2 MR. PIPESTEM: Objection. Compound question.</p> <p>3 Please answer if you know.</p> <p>4 A It would only be at the request to the Bureau of</p> <p>5 Indian Affairs that would deliver us that exact number.</p> <p>6 Q (BY MR. McCORMACK) Well, do you know if any</p> <p>7 proposed oil drilling or exploration on the 8400 acres is</p> <p>8 not proceeding because of the existence of the wind farm</p> <p>9 on the property?</p> <p>10 A I do not.</p> <p>11 Q You recognize that, and I know that we walked</p> <p>12 through this earlier today, and I was appreciative of your</p> <p>13 patience with me, that your knowledge of what's been going</p> <p>14 on at the OMC really goes back to 2010 before you were</p> <p>15 actually on the council, and you know there was a lawsuit</p> <p>16 brought by the OMC to try to stop the development of the</p> <p>17 wind farm on the theory that it would interfere with the</p> <p>18 development of oil and gas, right?</p> <p>19 MR. PIPESTEM: Objection. I'm instructing the</p> <p>20 witness not to answer. This involves facts pre-existing</p> <p>21 the filing of this lawsuit, so I'm instructing the witness</p> <p>22 not to answer.</p> <p>23 Q (BY MR. McCORMACK) You understand that the</p> <p>24 District Court, federal court here in this case, ruled</p> <p>25 that in fact the wind farm did not interfere in the</p>
<p>Page 75</p> <p>1 subject matter.</p> <p>2 A Oh, we can visit any time.</p> <p>3 Q Okay. The question I guess I'm asking, and</p> <p>4 maybe I misunderstood it, do you know what production is</p> <p>5 coming out of the 8400 acres currently and what percentage</p> <p>6 of total production from the Osage Fields is coming from</p> <p>7 the 8400 acres?</p> <p>8 A No, I do not have that number.</p> <p>9 Q All right. What is your -- do you have any idea</p> <p>10 what role the 8400 acres plays in the current royalties</p> <p>11 for the Osage Nation? Is it de minimus? Is it</p> <p>12 meaningful? Is it somewhere in between? Do you know?</p> <p>13 MR. PIPESTEM: Compound question.</p> <p>14 Q (BY MR. McCORMACK) You can answer, Mr. Waller.</p> <p>15 A Every barrel is important to my Osage</p> <p>16 shareholder.</p> <p>17 Q I understand that.</p> <p>18 A Just like your shareholders.</p> <p>19 Q No, I get it. I mean, you're in the oil</p> <p>20 business, I get it. But I'm just trying to find out if</p> <p>21 you know on this 8400 acres, you don't -- let's just maybe</p> <p>22 say it that way.</p> <p>23 You don't know whether this 8400 acres is</p> <p>24 contributing one half of one percent or one percent or</p> <p>25 something more than that relative to the total royalties</p>	<p>Page 77</p> <p>1 potential for drilling for oil and gas on the 8400 acres,</p> <p>2 correct?</p> <p>3 MR. ASHWORTH: Object to the form.</p> <p>4 Q (BY MR. McCORMACK) You can answer.</p> <p>5 A The directive was already there when I took the</p> <p>6 position as chairman in '14.</p> <p>7 Q Understood. But as we discussed this morning,</p> <p>8 you were attending the OMC meetings regularly from 2010</p> <p>9 on. You had regular interactions with people on the OMC</p> <p>10 when you were serving as someone who worked with --</p> <p>11 A Liaison.</p> <p>12 Q -- Chief Red Eagle. Right. So you knew there</p> <p>13 was a lawsuit filed, and you knew that the Court said that</p> <p>14 the development of the wind farm would not interfere with</p> <p>15 the oil and gas development on the 8400 acres. Is that</p> <p>16 fair?</p> <p>17 MR. PIPESTEM: Objection. Objection. I'm</p> <p>18 instructing the witness not to answer questions related to</p> <p>19 facts that are irrelevant to this case as decided by the</p> <p>20 Court prior to the filing of this lawsuit. I'm</p> <p>21 instructing the witness not to answer.</p> <p>22 MR. McCORMACK: I'm not going to fight with you.</p> <p>23 Q (BY MR. McCORMACK) It's not a fact in dispute.</p> <p>24 It's in the federal law books that there was a decision</p> <p>25 reached where the Court said that the development of this</p>

<p>Page 78</p> <p>1 wind farm would not interfere with the oil and gas 2 development on the 8400 acres. Are you aware of that fact 3 today as you sit here now? 4 A Yes. 5 Q All right. And so -- in fact, I know that at 6 some point in time, we'll get to it, but the Chaparral Oil 7 Company was involved in some efforts to consider drilling 8 on this 8400 acres in the last decade or so. Does that 9 refresh your recollection? 10 MR. PIPESTEM: Objection. I'm instructing the 11 witness not to answer. That question involves facts prior 12 to the filing of this litigation, so again I'm instructing 13 the witness not to answer. 14 Q (BY MR. McCORMACK) Well, let's talk about 15 something that you do know that's reality and that you 16 know today. Chaparral went bankrupt; is that right? 17 MR. McCORMACK: We seem to have lost Mr. Waller. 18 THE VIDEOGRAPHER: Want to go off the record? 19 MR. McCORMACK: No, he's back. 20 THE WITNESS: No, sir. I've got a lot of calls 21 hitting me. 22 Q (BY MR. McCORMACK) Sorry about that. 23 A Well, my wife's ill in the other room, so that's 24 only thing that matters, actually. 25 Q I have a wife too. I know exactly what that</p>	<p>Page 80</p> <p>1 That's irrelevant. Based on the question you asked could 2 be an answer prior to the filing of this litigation. 3 MR. McCORMACK: I find all those instructions 4 odd, but that's okay. But if you instruct, I can't do 5 anything about it, at least not now. 6 Q (BY MR. McCORMACK) My question is, let's pick a 7 date. Let's say December 1, 2014, are you aware of any 8 communication between the OMC and Chaparral in that time 9 frame having to do with potential development of oil and 10 gas assets on the 8400 acres which is the subject of this 11 lawsuit? 12 A I do not know that. 13 Q All right. I guess I'll ask that question more 14 generally as well. From December 1, 2014 until today, are 15 you aware of any other oil and gas entity that is 16 potentially involved in the development of oil and gas 17 production on the 8400 acres which is the subject of this 18 lawsuit? 19 A I do not know that. 20 Q I apologize again, Mr. Waller, if I asked this. 21 I know you told me earlier that you did not know what 22 actual royalties may have been paid by the production of 23 oil on the 8400 acres. My question is, do you know one 24 way or the other if there is any royalties coming from 25 that 8400 acres as you sit here today?</p>
<p>Page 79</p> <p>1 means. 2 Anyway, getting back to that, Chaparral Oil was 3 involved in potential efforts to develop on this 4 8400 acres historically; is that right? 5 MR. PIPESTEM: Objection. I'm instructing the 6 witness not to answer for the reasons previously stated. 7 Q (BY MR. McCORMACK) And Chaparral, are you aware 8 today as we sit here today, that Chaparral Oil went 9 bankrupt? 10 A No, I wasn't. 11 Q All right. But be that as it may, is Chaparral 12 currently doing anything on the 8400 acres? 13 A I can't answer that. 14 Q Because you don't know, or -- 15 A I have not requested that information from my 16 trustee. 17 Q Okay. Are you in contact today with Chaparral 18 for any reason? 19 A No. 20 Q When was the last time -- when was the last 21 time, if you recall, that the OMC was in contact with 22 Chaparral with regard to any issues concerning potential 23 oil exploration on the 8400 acres? 24 MR. PIPESTEM: Objection. I'm instructing the 25 witness not to answer for the reasons stated before.</p>	<p>Page 81</p> <p>1 A Yes, if the wells are producing, yes, they are. 2 Q All right. And do you know if the wells are 3 producing? 4 A Yes. 5 Q Okay. What you don't know is what percentage of 6 production from that location as a percentage of the total 7 production, if you will, for the Osage Nation; is that 8 fair? 9 A I have not had that information or requested it, 10 but I can. 11 Q All right. Where would that information come 12 from? Would it come from the OMC and assets at its 13 disposal, or would that be something that would come from 14 the BIA, or would that come from interacting with your 15 lesses under their relevant statute? How would that 16 information get to you if you wanted to pick up your phone 17 and call? 18 MR. PIPESTEM: Objection. Compound. 19 A That would be the Bureau of Indian Affairs. 20 Q (BY MR. McCORMACK) The Bureau of Indian 21 affairs? Yes, the Bureau of Indian Affairs would have 22 that information? 23 A The Department of Interior, yes. 24 Q All right. I know we talked briefly about the 25 Burbank Field, and you mentioned it was northeast, it was</p>

<p>Page 82</p> <p>1 at least portions --</p> <p>2 A Northwest.</p> <p>3 Q Sorry, my apologies, northwest, okay. I got it;</p> <p>4 I can see it. So northwest of the 8400 acres, do you know</p> <p>5 how close to the 8400 acres the first well in the Burbank</p> <p>6 Field is located?</p> <p>7 A Within a few miles.</p> <p>8 Q All right. Is that the closest one of the</p> <p>9 Burbank Field, within a few miles of the 8400 acres?</p> <p>10 A Until you get to the South Burbank Unit.</p> <p>11 Q And then the South Burbank Unit is located where</p> <p>12 relative to the 8400 acres?</p> <p>13 A It's also to the northwest. It's actually a</p> <p>14 little closer on the border.</p> <p>15 Q Is that also within a few miles of the</p> <p>16 8400 acres?</p> <p>17 A Yes, sir.</p> <p>18 Q When you say within a few miles, are we talking</p> <p>19 one mile? Five miles? Seven miles?</p> <p>20 A No, sir, under five.</p> <p>21 Q Under five. More than one, under five?</p> <p>22 A I'd have to look at my map.</p> <p>23 Q But you've been on the field. What's your</p> <p>24 guess?</p> <p>25 A I'm guessing under five.</p>	<p>Page 84</p> <p>1 question.</p> <p>2 Q (BY MR. McCORMACK) Do you know whether there</p> <p>3 had been any environmental work done or any work to ensure</p> <p>4 that historical artifacts were not disturbed on this</p> <p>5 property prior to the development of the wind farm in</p> <p>6 2011?</p> <p>7 MR. PIPESTEM: Objection. For the reason I</p> <p>8 stated earlier, I'm instructing the witness not to answer</p> <p>9 the question.</p> <p>10 Q (BY MR. McCORMACK) Have you read the Court</p> <p>11 filings that have been made by the various parties in</p> <p>12 their litigation that has been occurring since 2014,</p> <p>13 Mr. Waller?</p> <p>14 A To the best of my abilities.</p> <p>15 Q And have you read information concerning efforts</p> <p>16 to get injunctions to stop the wind farm from proceeding?</p> <p>17 MR. PIPESTEM: Objection. To the extent that</p> <p>18 question leads to or suggests facts or could be answered</p> <p>19 in a way that involves facts that preexist the filing of</p> <p>20 this lawsuit, I'm instructing the witness not to answer</p> <p>21 the question.</p> <p>22 MR. McCORMACK: Well, certainly filings that</p> <p>23 were made in a case after it was filed in November of 2014</p> <p>24 would not be the subject of your ongoing instruction for</p> <p>25 him not to answer questions which I think are relevant,</p>
<p>Page 83</p> <p>1 Q All right, fair enough. Going -- well, prior</p> <p>2 to -- I think we've discussed that you've never been on</p> <p>3 the 8400 acres. Prior to the efforts of my client to put</p> <p>4 a wind farm on that property, were you aware what the</p> <p>5 status of the 8400 acres was prior to the wind farm, in</p> <p>6 terms of what it was being used for, what was happening on</p> <p>7 the property, that sort of thing?</p> <p>8 MR. PIPESTEM: Objection. I'm instructing the</p> <p>9 witness not to answer the question as to the facts that</p> <p>10 predate the filing of this lawsuit. The Court has ruled</p> <p>11 that irrelevant. So again, I'm instructing the witness</p> <p>12 not to answer the question.</p> <p>13 Q (BY MR. McCORMACK) Well, do you know, for</p> <p>14 example, whether or not any of the consequence of the oil</p> <p>15 and gas production on this 8400 acres had created</p> <p>16 pollution or environmental problems of any sort prior to</p> <p>17 the wind farm's efforts to build the wind farm?</p> <p>18 MR. PIPESTEM: Objection. For the reasons I've</p> <p>19 stated, I'm instructing the witness not to answer.</p> <p>20 Q (BY MR. McCORMACK) Have you ever seen any</p> <p>21 information that would indicate to you what the</p> <p>22 environmental circumstances were on this 8400 acres prior</p> <p>23 to the wind farm appearing at the scene?</p> <p>24 MR. PIPESTEM: Objection. For the reasons I've</p> <p>25 stated, I'm instructing the witness not to answer the</p>	<p>Page 85</p> <p>1 but that's not really pertinent.</p> <p>2 Q (BY MR. McCORMACK) I asked you whether or not</p> <p>3 you had read the filings that occurred in the lawsuit that</p> <p>4 seems to be the go-off point for Counsel, whether you've</p> <p>5 read those pleadings. They all got filed after the</p> <p>6 lawsuit was filed, right? Have you read them?</p> <p>7 (Unintelligible talking)</p> <p>8 MR. McCORMACK: I apologize, whoever just spoke,</p> <p>9 that was pretty garbled. I don't think we got it.</p> <p>10 THE WITNESS: Tom, they're saying that they</p> <p>11 can't hear you and I, which is -- that's terrible.</p> <p>12 MR. McCORMACK: I'm looking. I've got -- my</p> <p>13 mute is not on, my stop video is not on. I can hear you,</p> <p>14 Mr. Waller. You can hear me?</p> <p>15 THE WITNESS: Yes.</p> <p>16 MR. McCORMACK: So it's Stuart, I'm getting,</p> <p>17 there may be a weak connection.</p> <p>18 THE WITNESS: It's all of them.</p> <p>19 THE VIDEOGRAPHER: Do we want to go off the</p> <p>20 record.</p> <p>21 MR. McCORMACK: I guess you've got to solve that</p> <p>22 problem.</p> <p>23 THE VIDEOGRAPHER: We're off the record at</p> <p>24 12:29.</p> <p>25 (BREAK FROM 12:29 TO 12:30)</p>

<p>Page 86</p> <p>1 THE VIDEOGRAPHER: We're back on the record at</p> <p>2 12:30 p.m.</p> <p>3 MR. McCORMACK: Do me a favor, and I apologize</p> <p>4 to everybody, could you read me back the last Q & A?</p> <p>5 (Last question and answer read back)</p> <p>6 Q (BY MR. McCORMACK) So you have, obviously the</p> <p>7 lawsuit was filed in November 2014. There were efforts</p> <p>8 made at that time for an injunction. All of those</p> <p>9 pleadings postdated the filing by physical mean, and</p> <p>10 you've read those. You've read those materials,</p> <p>11 Mr. Waller?</p> <p>12 A Yes.</p> <p>13 Q All right. And you saw the decision of the</p> <p>14 Court that came in the early part of this case that</p> <p>15 precluded any injunctive -- withdrawn.</p> <p>16 You've seen the history of the case since that</p> <p>17 time?</p> <p>18 A To date, yes.</p> <p>19 Q Yes, sir. And I know we'll get into the minutes</p> <p>20 in a while here, and that comes up periodically at the</p> <p>21 Osage Minerals Council's meetings; is that fair?</p> <p>22 A It should.</p> <p>23 Q Yes, indeed. Let me ask you, going back to what</p> <p>24 I think was marked as 158, which is your candidate</p> <p>25 interview in 2018, we talked about what you meant by the</p>	<p>Page 87</p> <p>1 instructing the witness not to answer.</p> <p>2 MR. McCORMACK: You didn't even get close to</p> <p>3 establishing that. I was talking about his communications</p> <p>4 with other Osage Council -- Osage Minerals Council members</p> <p>5 about their generalized approach to renewable energy in</p> <p>6 Osage County. I don't see where that gets into privilege.</p> <p>7 So if you're going to instruct him not to answer that, go</p> <p>8 ahead and do it, but I'm going to keep asking questions on</p> <p>9 that until we can get established some of that is somehow</p> <p>10 privileged.</p> <p>11 Q (BY MR. McCORMACK) Let me ask this question.</p> <p>12 You said that you were -- you had a directive. What was</p> <p>13 the directive that you discussed with members of the Osage</p> <p>14 Minerals Council?</p> <p>15 MR. PIPESTEM: Objection. To the extent that</p> <p>16 involves privileged communications between Minerals</p> <p>17 Council members, possibly and likely with legal counsel</p> <p>18 present, I'm instructing the witness not to answer the</p> <p>19 question.</p> <p>20 Q (BY MR. McCORMACK) I'm not asking about any</p> <p>21 communications you may have had with your counsel present.</p> <p>22 I'm extremely mindful of attorney-client privilege. I</p> <p>23 believe in it very much. I'm asking about you about</p> <p>24 communications that you had with members of the Osage</p> <p>25 Minerals Council independent of and without your counsel</p>
<p>Page 87</p> <p>1 best oilfield, and I think we've walked through that</p> <p>2 pretty comprehensively. I asked you -- I know I asked you</p> <p>3 previously whether you personally opposed the development</p> <p>4 of renewable energy projects such as wind farms in Osage</p> <p>5 County, and I think we have the answer to that question on</p> <p>6 the record.</p> <p>7 My question is have you spoken to others in the</p> <p>8 Osage Minerals Council on that subject matter, that is,</p> <p>9 whether they generally oppose the development of renewable</p> <p>10 energy projects such as wind farms anywhere in Osage</p> <p>11 County?</p> <p>12 MR. PIPESTEM: Objection. To the extent that</p> <p>13 requires answers that occurred prior to the filing of this</p> <p>14 lawsuit, I'm instructing the witness not to answer.</p> <p>15 Q (BY MR. McCORMACK) That was seven years ago, so</p> <p>16 I'm assuming there must be some conversations in that time</p> <p>17 frame, but I'll leave it to you, Mr. Waller?</p> <p>18 A There was a council directive.</p> <p>19 Q There was a council directive?</p> <p>20 A Yes, a consensus.</p> <p>21 Q What was the council directive and consensus?</p> <p>22 A To find some relief.</p> <p>23 Q To find some relief from what?</p> <p>24 MR. PIPESTEM: Objection. We're getting into</p> <p>25 privileged communications regarding this lawsuit, so I'm</p>	<p>Page 88</p> <p>1 present relative to this directive?</p> <p>2 MR. ASHWORTH: I'm going to also throw an</p> <p>3 objection in there to the extent that the Court has</p> <p>4 already ruled that internal communications are outside the</p> <p>5 scope of discovery.</p> <p>6 MR. PIPESTEM: I'll also say I will instruct the</p> <p>7 witness not to answer to the extent it involves other</p> <p>8 privileges, including the common interest privilege we</p> <p>9 have with the United States. So those communications, the</p> <p>10 answers you have -- or the question you asked could</p> <p>11 involve other people that could invoke a privilege. On</p> <p>12 that basis, I'm instructing the witness not to answer the</p> <p>13 question.</p> <p>14 MR. McCORMACK: I find it all highly irregular</p> <p>15 to have not even the remotest sense that there's been a</p> <p>16 privileged communication, and yet drawing an objection not</p> <p>17 to answer because of privileged communications. Let me</p> <p>18 walk through it because I need to make my record.</p> <p>19 Q (BY MR. McCORMACK) Have you had conversations</p> <p>20 with members of the Osage Minerals Council without lawyers</p> <p>21 present on the issue of whether or not the development of</p> <p>22 renewable energy would be something that the Osage Council</p> <p>23 should support or not support in Osage County? Let's try</p> <p>24 that one.</p> <p>25 MR. PIPESTEM: Objection. I'm instructing the</p>

<p>Page 90</p> <p>1 witness not to answer. To the extent that calls for</p> <p>2 questions that preexist the filing of this lawsuit, then</p> <p>3 the witness should not answer this question.</p> <p>4 MR. McCORMACK: I'm going to break it in two,</p> <p>5 then, because I want that instruction on the record.</p> <p>6 Q (BY MR. McCORMACK) So to the extent you've had</p> <p>7 conversations with the Osage Minerals Council prior to the</p> <p>8 filing of this lawsuit on the subject of whether or not</p> <p>9 the Osage Minerals Council should generally oppose the</p> <p>10 development of renewable energy projects such as wind</p> <p>11 farms anywhere in Osage County, please tell me what those</p> <p>12 communications are?</p> <p>13 MR. PIPESTEM: Objection. For the reasons I</p> <p>14 stated earlier, the Court has ruled that that information</p> <p>15 regarding communications prior to the filing of this</p> <p>16 lawsuit are irrelevant and, therefore, based on that court</p> <p>17 order, I'm instructing the witness not to answer.</p> <p>18 Q (BY MR. McCORMACK) All right, now let me take</p> <p>19 the next piece of that. Please tell me any communications</p> <p>20 you've had with Osage Minerals Council members without</p> <p>21 counsel present after December 1, 2014 in which the</p> <p>22 subject matter is whether the Osage Minerals Council</p> <p>23 should oppose the development of renewable energy projects</p> <p>24 such as wind farms anywhere in Osage County?</p> <p>25 MR. ASHWORTH: Object to the form.</p>	<p>Page 92</p> <p>1 Chief Standing Bear. There's no lawyers. I'm not talking</p> <p>2 about lawyers.</p> <p>3 MR. PIPESTEM: You did not -- first of all, if</p> <p>4 you're asking me the question, then I'll answer it. You</p> <p>5 did not limit the question to whether counsel was not</p> <p>6 there. There's also the question of executive privilege</p> <p>7 that we've raised repeatedly in this case. So you can set</p> <p>8 aside your -- you can ask the question about the time</p> <p>9 after the lawsuit, but it doesn't mean there aren't other</p> <p>10 privileges or other limitations of what he can answer.</p> <p>11 MR. McCORMACK: Okay. Let me try this.</p> <p>12 Q (BY MR. McCORMACK) Have you ever had any</p> <p>13 conversation about the future of renewable energy and wind</p> <p>14 farms in Osage County, Oklahoma after December 1, 2014</p> <p>15 with any person where your lawyers were not present? All</p> <p>16 you've got to answer that question is yes or no.</p> <p>17 A Yes, I have.</p> <p>18 Q All right. Now answer the question of who did</p> <p>19 you have those conversations with, and no other question?</p> <p>20 A I have referred back to my chief.</p> <p>21 Q All right. Did you have any conversations with</p> <p>22 other members of the Osage Minerals Council on that</p> <p>23 subject matter after December 1, 2014?</p> <p>24 A Not without being our --</p> <p>25 MR. PIPESTEM: Objection. I'm instructing the</p>
<p>Page 91</p> <p>1 Q (BY MR. McCORMACK) You can answer.</p> <p>2 A Not without my counsel I haven't.</p> <p>3 Q Okay. You've never spoken to -- have you ever</p> <p>4 spoken to Chief Standing Bear about the future of</p> <p>5 renewable power in Osage County in the period December 1,</p> <p>6 2014 forward?</p> <p>7 MR. ASHWORTH: Object to the form.</p> <p>8 MR. PIPESTEM: Objection based upon privilege as</p> <p>9 well, privileged conversations as well.</p> <p>10 Q (BY MR. McCORMACK) Okay. What was the setting</p> <p>11 in which you had one or more conversations with Chief</p> <p>12 Standing Bear about the future of renewable energy</p> <p>13 projects in Osage County after December 1, 2014?</p> <p>14 A Just to give him an update.</p> <p>15 Q An update on what?</p> <p>16 A This case.</p> <p>17 Q All right. Have you ever had any conversations</p> <p>18 with Chief Standing Bear in the period December 1, 2014</p> <p>19 forward in which you and he discussed whether or not</p> <p>20 renewable energy projects should be proceeding in Osage</p> <p>21 County generally?</p> <p>22 MR. PIPESTEM: Objection. I'm instructing the</p> <p>23 witness not to answer on the basis of privilege.</p> <p>24 MR. McCORMACK: What the heck is the basis for</p> <p>25 that? I asked him whether he had a conversation with</p>	<p>Page 93</p> <p>1 witness not to answer that question to the extent that</p> <p>2 legal counsel may have been present or there may have been</p> <p>3 discussion of legal strategy in that conversation between</p> <p>4 Minerals Counsel. So on that basis, I'm instructing the</p> <p>5 witness not to answer to preserve privilege.</p> <p>6 MR. McCORMACK: Yeah, well, I would disagree</p> <p>7 with you on that. You've got to establish that there was</p> <p>8 actually privileged communication that took place first.</p> <p>9 I was very careful what I asked. I asked him whether he'd</p> <p>10 had a conversation. I didn't ask him -- and who he had it</p> <p>11 with. I didn't ask him what it was. You get to assert</p> <p>12 privilege once you identify the basis of the privilege.</p> <p>13 You've got to have a person and persons and you have a</p> <p>14 legal issue. I'm not going to fight you --</p> <p>15 MR. PIPESTEM: Counsel, if you leave the door</p> <p>16 open to the communication with whoever might be there,</p> <p>17 that could include attorneys, and so I'm going to instruct</p> <p>18 the witness not to violate the privilege in that</p> <p>19 circumstance.</p> <p>20 MR. McCORMACK: You have to identify the</p> <p>21 attorney to establish the privilege. I'm not asking what</p> <p>22 he said. This is identifying the communication. I</p> <p>23 haven't asked substantively anything about what was said.</p> <p>24 You can't assert a privilege unless you establish the</p> <p>25 elements of privilege. You've got to have a lawyer,</p>

<p>Page 94</p> <p>1 you've got to have legal advice, and it's got to be 2 confidential.</p> <p>3 MR. PIPESTEM: I understand the elements of 4 privilege. You're asking such a broad question about 5 communications with council members without limiting that 6 to with other people being present, like legal counsel. 7 You're asking a question that could lead to a disclosure 8 of privilege conversations, and so I'm going to instruct 9 the witness consistently to not answer that question.</p> <p>10 MR. McCORMACK: Yeah, and now you're coaching 11 the witness, and I don't appreciate that.</p> <p>12 MR. PIPESTEM: No, I'm not either. You asked me 13 a question. Now, in this deposition under the Federal 14 Rules, I can respond to your question. I'm addressing 15 you, and I am not coaching this witness.</p> <p>16 MR. ASHWORTH: I'm going to interject also. I'm 17 going to interject also. Regardless of privilege, the 18 Court has already specifically ruled in this matter that 19 any internal communications, as well as communications 20 with third parties, regardless of privilege, is irrelevant 21 and outside the scope of discovery, and the defendants are 22 not entitled to discover that information, whether the 23 conversation has happened or not.</p> <p>24 MR. McCORMACK: Okay. Are you taking the 25 position that we are not allowed to inquire of any</p>	<p>Page 96</p> <p>1 and I think it's one of the great privileges of law in 2 this country. You don't have a problem with me on that.</p> <p>3 My question is whether there are communications 4 that took place that aren't privileged, and I'm entitled 5 to find out about that. I respect your desire to make 6 sure I don't step into privileged areas, so let me try to 7 do a better job of it.</p> <p>8 Q (BY MR. McCORMACK) Mr. Waller, thank you for 9 your patience. We have talked about your communications 10 after December 1, 2014 with Chief Standing Bear about the 11 potential future of renewable energy in Osage County, and 12 you said you had such conversations. And then I asked you 13 what was the nature of those conversations, and then you 14 said you reported to him. Then I said what were you 15 reporting to him, and you said the progress of the case, I 16 think is what you said. If I got any of that wrong, 17 please correct me now.</p> <p>18 A Yes, it was on the case.</p> <p>19 Q All right. And did you have any communications 20 with him after December 1, 2014 about the future of 21 renewable energy in Osage County that was not connected to 22 the case?</p> <p>23 MR. ASHWORTH: Object to form.</p> <p>24 A No.</p> <p>25 Q (BY MR. McCORMACK) You did not, okay. Did you</p>
<p>Page 95</p> <p>1 communications of the members of the Osage Minerals 2 Council concerning the subject matter of this lawsuit at 3 any time? Is that your position?</p> <p>4 MR. ASHWORTH: First off, that's what the Court 5 said. Second --</p> <p>6 MR. McCORMACK: No, I'm not asking you -- I can 7 read the Court's decision. I'm asking your position. If 8 you're going to instruct this witness not to answer any of 9 those questions, I find that -- nothing shocks me, but I 10 find that quite interesting. Is that your position, that 11 if I'm going to ask him what he spoke to another council 12 member about, you're going to say he can't answer the 13 question?</p> <p>14 MR. ASHWORTH: Did I ever say he couldn't answer 15 the question?</p> <p>16 MR. McCORMACK: I think that's what you said.</p> <p>17 MR. ASHWORTH: No, I did not. I raised an 18 objection.</p> <p>19 MR. McCORMACK: I understand. We're all doing 20 our job. Let's take a step back. I didn't mean to get 21 everybody hot and bothered. Let's go back to my question. 22 Look, I'm a -- nobody believes more in the privilege than 23 me. I completely get it. I have no interest in asking 24 for privileged communications. I would not ask for 25 privileged communications. I recognize and adhere to it,</p>	<p>Page 97</p> <p>1 have any communications after December 1, 2014 with 2 members of the Osage Minerals Council with regard to the 3 future of renewable energy, including wind projects in 4 Osage County, that did not involve your lawyers? You can 5 answer that question yes or no.</p> <p>6 MR. ASHWORTH: Object to the form.</p> <p>7 Q (BY MR. McCORMACK) You can answer.</p> <p>8 A No. I've never had that without my counsel 9 being present.</p> <p>10 Q All right. Have you had conversations with 11 anyone else on God's beautiful planet, did you have 12 conversations with anyone else on the subject matter of 13 the future of wind farms in Osage County in the period 14 December 1, 2014 onward that did not involve discussing 15 this case?</p> <p>16 A No.</p> <p>17 Q All right. So you never discussed that with 18 Chief Standing Bear other than about the case, you never 19 had a conversation like that with any members the Osage 20 Minerals Council without your counsel present, and you 21 never spoke about it to any other person on God's 22 beautiful planet, yes?</p> <p>23 A Without counsel, that's correct.</p> <p>24 Q All right. Let me ask you --</p> <p>25 MR. PIPESTEM: Counsel, is now a good time for a</p>

<p style="text-align: right;">Page 98</p> <p>1 break?</p> <p>2 MR. McCORMACK: All of our hollering at each</p> <p>3 other burned up that 15 minutes. It's fine with me. Tell</p> <p>4 me when you want to come back. How about 1:30?</p> <p>5 MR. PIPESTEM: That's fine.</p> <p>6 MR. McCORMACK: 1:30 Central time?</p> <p>7 MR. PIPESTEM: Chairman Waller, is that okay</p> <p>8 with you, 1:30?</p> <p>9 THE WITNESS: Yes.</p> <p>10 THE VIDEOGRAPHER: We're off the record at</p> <p>11 12:48 p.m.</p> <p>12 (BREAK FROM 12:48 TO 1:32)</p> <p>13 THE VIDEOGRAPHER: We're on the record at</p> <p>14 1:32 p.m.</p> <p>15 Q (BY MR. McCORMACK) Let me ask you a quick</p> <p>16 question as a follow-up from our discussions earlier</p> <p>17 today. What is publicly available from the OMC for a</p> <p>18 person who was considering a commercial project in Osage</p> <p>19 County to review to see if a lease or permit is required</p> <p>20 under 214 or 211?</p> <p>21 A They would be sent to the Bureau of Indian</p> <p>22 Affairs website.</p> <p>23 Q Okay. The OMC doesn't have any information on</p> <p>24 that subject matter independent of what the BIA might</p> <p>25 have?</p>	<p style="text-align: right;">Page 100</p> <p>1 you're at Article 8? You need to move forward. I don't</p> <p>2 know what to say. Mine has 16 at the bottom. What's that</p> <p>3 number down here on the right?</p> <p>4 THE VIDEOGRAPHER: That's ten.</p> <p>5 MR. McCORMACK: Ten?</p> <p>6 THE VIDEOGRAPHER: Yeah.</p> <p>7 MR. McCORMACK: Yeah, so go to page 16, the one</p> <p>8 that says 16 on the bottom right.</p> <p>9 THE VIDEOGRAPHER: That is 16.</p> <p>10 MR. McCORMACK: There you go, section one</p> <p>11 Article 10, Code of Ethics. Do you see that? Just blow</p> <p>12 it up. No, Article X. Right there in the middle. There</p> <p>13 you go.</p> <p>14 Q (BY MR. McCORMACK) Anyway, we got there</p> <p>15 finally. Mr. Waller, have you seen Article 10 of the code</p> <p>16 of ethics -- excuse me, Article X of the Osage Nation</p> <p>17 Constitution previously?</p> <p>18 A Yes.</p> <p>19 Q All right. And I just want to ask a couple of</p> <p>20 questions about this section. It says purpose,</p> <p>21 recognizing the desire of the Osage people to establish a</p> <p>22 government that is fair and equitable to all people. Who</p> <p>23 is that all people? Who does that refer to?</p> <p>24 A The citizens of the Osage Nation.</p> <p>25 Q All right. And so -- and then it goes on to</p>
<p style="text-align: right;">Page 99</p> <p>1 A No, that's federal law. That's what we follow.</p> <p>2 Q All right. Let me ask you, and have the court</p> <p>3 reporter mark, I believe we're at 159, and this is tab 84.</p> <p>4 This is the Constitution of the Osage Nation. Are you</p> <p>5 familiar with this document, Mr. Waller?</p> <p>6 (WHEREUPON, Exhibit 159 was marked for</p> <p>7 identification.)</p> <p>8 A Very familiar.</p> <p>9 Q Let me ask you to look at a couple sections, if</p> <p>10 you will. If you'll look at Article 10 of the</p> <p>11 Constitution of the Osage Nation, it's on page 16.</p> <p>12 MR. McCORMACK: Maybe I can have the court</p> <p>13 reporter go to page 16 and blow it up. Let's look at</p> <p>14 Article 10, section one. It's the prior page, I think.</p> <p>15 No, it's page 16 on the document, and it's Article 10.</p> <p>16 Page 16, do you see the number on the lower right? You've</p> <p>17 got 11; 16 is the one I'm looking for.</p> <p>18 THE VIDEOGRAPHER: That is page 16.</p> <p>19 MR. McCORMACK: I'm seeing 17 on the bottom of</p> <p>20 the page. Okay. We're going to have to do it the hard</p> <p>21 way. Blow it back down to where it was, and let's go back</p> <p>22 page by page.</p> <p>23 THE VIDEOGRAPHER: Okay.</p> <p>24 MR. McCORMACK: Looking for Article 10. You're</p> <p>25 in sections still. Keep going, keep going. You see</p>	<p style="text-align: right;">Page 101</p> <p>1 say, the Osage people is a term in the first sentence. Is</p> <p>2 all people only Osage people, or is it all people?</p> <p>3 A All people Osage.</p> <p>4 Q Okay. So I would ask you, "Elected or appointed</p> <p>5 tribal officials and employees of the Osage Nation,</p> <p>6 putting aside their personal and private interests, shall</p> <p>7 strive for the common good of the Osage people and shall</p> <p>8 administrate fair and equal treatment of all persons,</p> <p>9 claims, and transaction petitioning before the Osage</p> <p>10 Nation government." Do you see that?</p> <p>11 A Yes.</p> <p>12 Q That phrase "all persons" in that section, who</p> <p>13 does that refer to?</p> <p>14 A Anyone under the Osage Nation.</p> <p>15 Q All right. So my understanding of your reading</p> <p>16 of the Code of Ethics is that any reference to people or</p> <p>17 persons within this section relates only to the Osage</p> <p>18 people or Osage persons; is that right?</p> <p>19 A That is identified, yes.</p> <p>20 Q All right. Now, let me ask you to go to page 21</p> <p>21 of this document, and it's Article 15, Natural Resources</p> <p>22 and Mineral Management. You understand that this is the</p> <p>23 section of the Constitution that deals with the mineral</p> <p>24 rights of the Osage Nation. Is that a fair description?</p> <p>25 A For the Nation it is.</p>

<p>Page 102</p> <p>1 Q And let me -- let me go over to section four</p> <p>2 onto the next page. Well, let's see section four</p> <p>3 management of the Osage Mineral Estate. This is on page</p> <p>4 21.</p> <p>5 THE VIDEOGRAPHER: It skips from 20 to 22.</p> <p>6 MR. McCORMACK: That's highly unfortunate. Your</p> <p>7 copy doesn't have page 21 in it?</p> <p>8 THE VIDEOGRAPHER: Let me look. One second,</p> <p>9 please.</p> <p>10 MR. McCORMACK: Actually, I think that is the</p> <p>11 document. Yeah, there is no 22 for some reason, although</p> <p>12 the sections continue. So go to page 21, and go to</p> <p>13 section four. Go to section four. Blow up section four.</p> <p>14 Q (BY MR. McCORMACK) All right. This section</p> <p>15 four says Management of the Osage Mineral Estate, and the</p> <p>16 first sentence says "The Mineral Estate of the Osage</p> <p>17 Reservation is reserved to the Osage Nation." Do you see</p> <p>18 that?</p> <p>19 A Yes.</p> <p>20 Q All right. Then let's go over to the next page,</p> <p>21 the second paragraph of the next page.</p> <p>22 THE VIDEOGRAPHER: That's page 23?</p> <p>23 MR. McCORMACK: Yes.</p> <p>24 Q (BY MR. McCORMACK) It says, "The Osage Minerals</p> <p>25 Council is recognized by the Osage Nation government as an</p>	<p>Page 104</p> <p>1 Q All right. And do you have a sense, is that --</p> <p>2 is that constitutionally set as the authority and power of</p> <p>3 the Osage Minerals Council, in your understanding?</p> <p>4 A Yes.</p> <p>5 Q All right. And other than that power, is there</p> <p>6 another power the Osage Minerals Council has that is not</p> <p>7 set forth in this Constitution?</p> <p>8 A Under Article 15, I say no.</p> <p>9 Q All right. That suggests that maybe you believe</p> <p>10 there's another provision that could add to the power</p> <p>11 authority of the Osage Minerals Council beyond Article 15,</p> <p>12 or no?</p> <p>13 A No.</p> <p>14 MR. PIPESTEM: Objection. Calls for a legal</p> <p>15 conclusion.</p> <p>16 Q (BY MR. McCORMACK) All right. So Article 15 is</p> <p>17 the section from which the Osage Minerals Council derives</p> <p>18 its power, at least constitutionally, for the Osage</p> <p>19 Nation; is that fair?</p> <p>20 MR. PIPESTEM: Objection. Calls for a legal</p> <p>21 conclusion. Please answer if you know.</p> <p>22 A Article 15 encompasses all of that effort and</p> <p>23 provisions that is allowed, and the Osage Minerals Council</p> <p>24 is the Osage Nation. We're not a separated element.</p> <p>25 Q (BY MR. McCORMACK) Well, that was actually kind</p>
<p>Page 103</p> <p>1 independent agency within the Osage Nation established for</p> <p>2 the sole purpose of continuing its previous duties to</p> <p>3 administer and develop the Osage Mineral Estate in</p> <p>4 accordance with the Osage Allotment Act of June 28, 1906,</p> <p>5 as amended, with no legislative authority for the Osage</p> <p>6 Nation government." Do you see that?</p> <p>7 A Yes.</p> <p>8 Q All right. Is it your understanding that this</p> <p>9 constitutional provision is the one that vests the Osage</p> <p>10 Minerals Council as the independent agency within the</p> <p>11 Osage Nation to manage the Osage Mineral Estate; is that</p> <p>12 fair?</p> <p>13 A I only read Article 15.</p> <p>14 Q I'm sorry, I didn't understand that answer.</p> <p>15 A Article 15 allows the element in which I run</p> <p>16 under, the Osage Minerals Council directive.</p> <p>17 Q All right. Let me go to the next paragraph.</p> <p>18 A Yes.</p> <p>19 Q Let me blow that up as well, or have the</p> <p>20 concierge do so.</p> <p>21 In here it says, "The Osage Minerals Council</p> <p>22 shall have the power to consider and approve leases and to</p> <p>23 propose other forms of development of the Osage Mineral</p> <p>24 Estate." Do you see that?</p> <p>25 A Yes, sir.</p>	<p>Page 105</p> <p>1 of my question, which is the Osage Constitution gives the</p> <p>2 Osage Minerals Council "the power to consider and approve</p> <p>3 leases and propose other forms of development of the Osage</p> <p>4 Mineral Estate." That's what this document says, yes?</p> <p>5 A Yes, sir.</p> <p>6 Q All right. And then -- and then the next</p> <p>7 section was interesting to me. It says, "Mineral leases</p> <p>8 approved and executed by the Council shall be deemed</p> <p>9 approved by the Osage Nation unless within five working</p> <p>10 days, written objection is received from the Office of the</p> <p>11 Principal Chief that the executed lease or other</p> <p>12 development activity violates Osage law or regulation."</p> <p>13 Do you see that?</p> <p>14 A Yes.</p> <p>15 Q And then constitutionally it creates the</p> <p>16 provision that any dispute that might arise through that</p> <p>17 process would be heard before the Supreme Court of the</p> <p>18 Osage Nation Judiciary. Do you see that?</p> <p>19 A Yes.</p> <p>20 Q So is it your understanding that the Osage</p> <p>21 Minerals Council has the power to consider and approve</p> <p>22 leases and to propose other forms of development of the</p> <p>23 Osage Mineral Estate, but that the Office of the Principal</p> <p>24 Chief has five days to either approve or not approve of</p> <p>25 the action by the Osage Minerals Council?</p>

<p>Page 108</p> <p>1 A That's correct.</p> <p>2 Q All right. Has that been your operating</p> <p>3 assumption the entire time that you've been associated</p> <p>4 with the Osage Minerals Council in the period --</p> <p>5 A I'm not assuming. That is the operation under</p> <p>6 the Constitution that I have (inaudible).</p> <p>7 Q Understood. The question I guess I have is</p> <p>8 has -- was there ever a time that you can recall when you</p> <p>9 were affiliated with the Osage Minerals Council when a</p> <p>10 lease or a proposal to develop the Osage Minerals Council</p> <p>11 was overruled by the Office of the Principal Chief?</p> <p>12 A No.</p> <p>13 Q All right. Because of this, is there a</p> <p>14 methodology in place where any decision made by the Osage</p> <p>15 Minerals Council must be provided to the Office of the</p> <p>16 Principal Chief immediately after it makes the</p> <p>17 determination to see whether or not the Office of</p> <p>18 Principal Chief objects to any of the actions of the Osage</p> <p>19 Minerals Council?</p> <p>20 A Yes.</p> <p>21 MR. PIPESTEM: Objection. Mischaracterizes this</p> <p>22 provision of the Osage Constitution.</p> <p>23 Q (BY MR. McCORMACK) I'm sorry, you said yes.</p> <p>24 What would that process be?</p> <p>25 A We use the Osage Nation website to download</p>	<p>Page 108</p> <p>1 reading of it?</p> <p>2 MR. PIPESTEM: Objection. Mischaracterizes the</p> <p>3 law in the Osage Constitution.</p> <p>4 Q (BY MR. McCORMACK) You can answer.</p> <p>5 A As it is written.</p> <p>6 Q All right. That's what I was trying to get to.</p> <p>7 In practice is it different, or is there a system built, I</p> <p>8 think you said so, that the Office of the Principal Chief</p> <p>9 gets all the decisions of the Osage Minerals Council</p> <p>10 relative to the subject matter set forth in this provision</p> <p>11 and then has the right to react or object to that? Is</p> <p>12 that as a practical matter how it works?</p> <p>13 MR. PIPESTEM: Objection. Mischaracterization</p> <p>14 of Osage Constitutional law.</p> <p>15 Q (BY MR. McCORMACK) I'm not sure what your</p> <p>16 counsel is objecting about, but that's okay. He has the</p> <p>17 right to do it, but you've still got to answer the</p> <p>18 question.</p> <p>19 A And I go back to Article 15, that it encompasses</p> <p>20 this also out of the Constitution.</p> <p>21 Q I understand Article 15 deals with the Osage</p> <p>22 Minerals Council and its right relative to the Mineral</p> <p>23 Estate. What I'm trying to do is understand</p> <p>24 constitutionally what the process is for the Osage</p> <p>25 Minerals Council exercising its authority and what it is</p>
<p>Page 107</p> <p>1 immediately to it for availability, and the chief is sent</p> <p>2 any effort that includes something he needs to look over</p> <p>3 for us.</p> <p>4 Q I see. As a result of the fact that the Office</p> <p>5 of the Principal Chief has oversight, if you will,</p> <p>6 constitutionally on decisions made by the Osage Minerals</p> <p>7 Council relative to approving leases and proposing other</p> <p>8 forms of development of the Osage Mineral Estate, does</p> <p>9 that mean that often in practice the Osage Minerals</p> <p>10 Council works in conjunction with the Principal Chief's</p> <p>11 Office to make sure that it doesn't get out in front of</p> <p>12 the chief if he's opposed to an action, that sort of</p> <p>13 thing?</p> <p>14 MR. PIPESTEM: Objection. Mischaracterization</p> <p>15 of the law.</p> <p>16 MR. McCORMACK: I don't think so, but that's an</p> <p>17 objection.</p> <p>18 Q (BY MR. McCORMACK) You can answer the question,</p> <p>19 Mr. Waller.</p> <p>20 A Repeat it for me, please.</p> <p>21 Q Sure. This provision here suggests that</p> <p>22 whatever the Osage Minerals Council does in approving</p> <p>23 leases or proposing other forms of development on the</p> <p>24 Osage Mineral Estate is subject to objection by the Office</p> <p>25 of the Principal Chief within five days. Is that a fair</p>	<p>Page 109</p> <p>1 subject to in terms of possible objection by the Office of</p> <p>2 the Principal Chief. I'm just trying to find out if that</p> <p>3 as a practical matter is something that is understood by</p> <p>4 the Osage Minerals Council and the Office of Principal</p> <p>5 Chief based upon your observations and knowledge?</p> <p>6 A Speaking on behalf as the chairman, yes, I'm</p> <p>7 aware of it.</p> <p>8 Q Right. That's all I was trying to find out. So</p> <p>9 as a practical matter, look, organizations have rules, and</p> <p>10 I'm just trying to figure -- and practicalities. So what</p> <p>11 I'm trying to figure out, and maybe you answered the</p> <p>12 question, Mr. Waller, from what you told me earlier today,</p> <p>13 which is from 2010 you were really the representative, if</p> <p>14 you will, of the chief at that time to the Osage Minerals</p> <p>15 Council. I presume because the chief understands that it</p> <p>16 does have this objection right, is that one of the reasons</p> <p>17 why you understood you were you doing that job for the</p> <p>18 prior chief?</p> <p>19 MR. PIPESTEM: Objection. I'm instructing the</p> <p>20 witness not to answer on any matter prior to the filing of</p> <p>21 this litigation, including at the time from 2010 until the</p> <p>22 time this case was filed.</p> <p>23 MR. McCORMACK: I can't stop you from doing</p> <p>24 that, but you are overreading the judge's orders. You</p> <p>25 seem to think that anything that happened before the date</p>

<p>Page 110</p> <p>1 of this Complaint is off-limits, and the issue is whether</p> <p>2 or not the bad faith of the Osage Nation and Osage</p> <p>3 Minerals Council, I understand that that's what the Court</p> <p>4 dealt with. But out of good faith, and it's certainly not</p> <p>5 off the table and these questions have been asked of</p> <p>6 multiple witnesses, our witnesses and other witnesses, and</p> <p>7 no one has instructed that the date of the Complaint is</p> <p>8 some wall that nobody can go past. I really disagree with</p> <p>9 that. If you're going to continue to instruct to do it,</p> <p>10 there's nothing I can do about that, but you do so at your</p> <p>11 own peril.</p> <p>12 Q (BY MR. McCORMACK) I'm going to ask the</p> <p>13 question again. Did you understand in 2010 when you were</p> <p>14 working on behalf of the chief at that time that one of</p> <p>15 your jobs was to inform the chief so that he could</p> <p>16 properly exercise his authority constitutionally under</p> <p>17 Article 15?</p> <p>18 MR. PIPESTEM: Objection. I'm instructing the</p> <p>19 witness not to answer the question for the reasons I've</p> <p>20 given before.</p> <p>21 MR. McCORMACK: Okay, I want to get that on the</p> <p>22 record. Is your view that anything that happened before</p> <p>23 the date of this Complaint is off-limits for this witness?</p> <p>24 MR. PIPESTEM: I'll let you interpret the</p> <p>25 Court's order any way you want to. I think your</p>	<p>Page 111</p> <p>1 interpretation is wrong.</p> <p>2 MR. McCORMACK: I'm not asking that. I'm asking</p> <p>3 what your instruction is so that I don't waste a lot of</p> <p>4 time in this deposition. If your view is that anything</p> <p>5 that happened prior to the date of the lawsuit,</p> <p>6 November 2014, is not something I can ask about, then</p> <p>7 please state that on the record so I understand exactly</p> <p>8 where you're coming from.</p> <p>9 MR. PIPESTEM: I have restated it over and over</p> <p>10 and over again. I don't know how much more clear I can be</p> <p>11 about it. I have stated that over and over again.</p> <p>12 MR. McCORMACK: Okay, I got it. So you're</p> <p>13 saying that this witness will not be allowed to answer any</p> <p>14 questions having to do with any subject matter prior to</p> <p>15 the date of this lawsuit in November of 2014?</p> <p>16 MR. PIPESTEM: Related to this lawsuit, that's</p> <p>17 right. You asked him questions about -- a number of</p> <p>18 questions about his educational background, his employment</p> <p>19 history. Of course I allowed those questions. But</p> <p>20 consistent with the Court's orders, you are not permitted</p> <p>21 to ask irrelevant questions when there is a court order</p> <p>22 that has determined that that's the case.</p> <p>23 MR. McCORMACK: The power of the Constitution of</p> <p>24 the Osage Minerals Council and the Office of the Principal</p> <p>25 Chief is in and of itself distinct from anything going on</p>
<p>Page 112</p> <p>1 in our lawsuit. I guess this falls under the category,</p> <p>2 however, that historically this comes before November of</p> <p>3 2014 so you're going to instruct him not to answer these</p> <p>4 questions.</p> <p>5 MR. PIPESTEM: As I have -- since you're asking</p> <p>6 me, you have mischaracterized what this Constitution says</p> <p>7 repeatedly, and so I've objected to it.</p> <p>8 MR. McCORMACK: I didn't ask you that question.</p> <p>9 I'm not asking for your interpretation of this</p> <p>10 Constitution so you can feed an answer to your client.</p> <p>11 I'm asking you very specifically if I'm asking about how</p> <p>12 this Constitution works, your point is that the order that</p> <p>13 the judge has issued precludes me from asking the question</p> <p>14 because this Constitution, what, existed before 2014?</p> <p>15 That's my question.</p> <p>16 MR. PIPESTEM: I stated my objection. I made my</p> <p>17 directive to the client not to answer the question for the</p> <p>18 reasons I stated, and that's a part of this record. I'm</p> <p>19 not instructing the witness in any way, shape, or form</p> <p>20 about that. I'm directing him not to answer the question</p> <p>21 that you asked.</p> <p>22 MR. McCORMACK: Okay. Do you believe that I'm</p> <p>23 allowed to ask any questions prior to November of 2014 of</p> <p>24 this witness that might bear on the good faith of my</p> <p>25 client?</p>	<p>Page 113</p> <p>1 MR. PIPESTEM: No, I don't.</p> <p>2 MR. McCORMACK: Okay. I clearly understand your</p> <p>3 position now. I appreciate it.</p> <p>4 MR. PIPESTEM: Among a host of other questions</p> <p>5 you can't ask.</p> <p>6 MR. McCORMACK: Well, it may make this</p> <p>7 deposition go a lot faster since I now know that there's a</p> <p>8 bright line in your mind and you're going to enforce it,</p> <p>9 so I've got that.</p> <p>10 Q (BY MR. McCORMACK) Let me ask more questions,</p> <p>11 and if I draw the instruction, so be it.</p> <p>12 In your time on the Osage Minerals Council and</p> <p>13 in your time working for the principal chief prior to</p> <p>14 being on the Osage Minerals Council, perhaps you've</p> <p>15 answered this question, I apologize, Mr. Waller, if you</p> <p>16 have, but you don't ever remember there being an objection</p> <p>17 by the Office of the Principal Chief to any action taken</p> <p>18 by the Osage Minerals Council exercising its</p> <p>19 constitutional rights under Article 15; is that right?</p> <p>20 A I've not had that happen.</p> <p>21 Q All right. You mentioned earlier that you had</p> <p>22 spoken to Chief Standing Bear on several subject matters</p> <p>23 that related to the lawsuit, and because it was privileged</p> <p>24 you drew the instruction not to answer. Do you</p> <p>25 communicate regularly in the time that you've been on the</p>

<p style="text-align: right;">Page 114</p> <p>1 Osage Minerals Council, both as a member and then as a</p> <p>2 chairman, with the chief, now Standing Bear, before that</p> <p>3 whoever may have been chief at the time, with regard to</p> <p>4 matters that the Osage Minerals Council will consider at</p> <p>5 its hearings and its proceedings?</p> <p>6 A We take everything to executive and invite them</p> <p>7 in.</p> <p>8 Q I was going to ask you about executive session.</p> <p>9 So what triggers executive session? What does it relate</p> <p>10 to? How do you -- how do you go into executive session?</p> <p>11 A It is requested and put on the agenda, and then</p> <p>12 we vote to go in executive session and take care of our</p> <p>13 business there. In this case you're asking specifically</p> <p>14 about the chief, and in those situations which he needs</p> <p>15 that, he is brought in.</p> <p>16 Q And again, I don't know as a practical matter,</p> <p>17 but in your experience on the Osage Minerals Council how</p> <p>18 often does the principal chief attended the meetings? Is</p> <p>19 that a common event or is that a periodic event or what is</p> <p>20 your sense of that issue?</p> <p>21 A However his schedule works out.</p> <p>22 Q Would he typically come if he were available and</p> <p>23 participate, or is it out of the ordinary to have the</p> <p>24 chief come to an Osage Minerals Council meeting?</p> <p>25 MR. PIPESTEM: Objection. Compound question.</p>	<p style="text-align: right;">Page 116</p> <p>1 A The chief can say anything he wants.</p> <p>2 Q All right, that's what I'm trying to get to.</p> <p>3 Your understanding on a practical basis is that the chief</p> <p>4 could, in fact, speak on behalf of the Osage Minerals</p> <p>5 Council?</p> <p>6 A And has many times upon our request.</p> <p>7 Q Okay, all right.</p> <p>8 A He's a big hitter in Washington if you didn't</p> <p>9 know that.</p> <p>10 Q No, he's a very impressive guy.</p> <p>11 A Yes, sir, he is, and his wife is my relative.</p> <p>12 Q Okay, that's good to know. I looked up -- I've</p> <p>13 certainly done a lot of work with Chief Standing Bear too,</p> <p>14 and I've seen exactly what you're saying.</p> <p>15 A Thank you.</p> <p>16 Q Very impressive man. Let me turn to something</p> <p>17 else now. I want to go --</p> <p>18 A Thank you.</p> <p>19 Q You're welcome. I want to go to tab 81 for the</p> <p>20 court reporter, and I think we're --</p> <p>21 MR. McCORMACK: What's our tab now, are we at</p> <p>22 159 or 160?</p> <p>23 THE COURT REPORTER: This will be 160.</p> <p>24 MR. McCORMACK: Say that again.</p> <p>25 THE COURT REPORTER: This will be 160.</p>
<p style="text-align: right;">Page 115</p> <p>1 Q (BY MR. McCORMACK) You can answer.</p> <p>2 A He has always come when we request, and then</p> <p>3 also if it's something that he needs to speak with us</p> <p>4 about.</p> <p>5 Q Can the chief speak on behalf of the Osage</p> <p>6 Minerals Council?</p> <p>7 A Unless he designates it to me, which he did</p> <p>8 under the ICEWIG, the federal entity of Indian Country</p> <p>9 Energy Infrastructure Working Group, and then as is done</p> <p>10 through his office as designee. But yes, unless he</p> <p>11 chooses someone else.</p> <p>12 Q And that's important for me to know, and I</p> <p>13 appreciate that. When did that designation take place, if</p> <p>14 I may ask?</p> <p>15 A During my tenure on OMC 3.</p> <p>16 Q So after 2018?</p> <p>17 A After '14.</p> <p>18 Q After '14.</p> <p>19 A '16, '17, sir. I don't have the dates in front</p> <p>20 of me, but I still sit on said committee.</p> <p>21 Q Well, and just as a practical matter, prior to</p> <p>22 that time could the principal chief speak on behalf of the</p> <p>23 Osage Minerals Council without concern that the Osage</p> <p>24 Minerals Council's independence was somehow implicated by</p> <p>25 that?</p>	<p style="text-align: right;">Page 117</p> <p>1 MR. McCORMACK: I can't hear you.</p> <p>2 THE COURT REPORTER: 160.</p> <p>3 MR. McCORMACK: 160, oh sorry.</p> <p>4 THE COURT REPORTER: No problem.</p> <p>5 MR. McCORMACK: Thank you.</p> <p>6 Q (BY MR. McCORMACK) I'm going to mark this as</p> <p>7 Exhibit 160. This is Osage Minerals Council's First</p> <p>8 Amended Complaint in Intervention which was filed in this</p> <p>9 case in July of 2020 and ask you whether you've seen this</p> <p>10 document before.</p> <p>11 (WHEREUPON, Exhibit 160 was marked for</p> <p>12 identification.)</p> <p>13 A Yes.</p> <p>14 Q Did you read this document prior to its being</p> <p>15 filed?</p> <p>16 A Yes.</p> <p>17 Q All right. And you approved its filing, I'm</p> <p>18 assuming, as a representative of the Osage Minerals</p> <p>19 Council?</p> <p>20 A As a directive from the Osage Minerals Council.</p> <p>21 Q Okay. Let me ask you if I can --</p> <p>22 A Sure.</p> <p>23 Q -- to turn to page 19 of the document, which is</p> <p>24 the section entitled Prayer for Relief. All right, now, I</p> <p>25 think I've learned from today, and I appreciate the</p>

<p style="text-align: right;">Page 118</p> <p>1 testimony, that as you sit here today you are the chairman 2 of the Osage Minerals Council, yes? 3 A Correct. 4 Q All right. And obviously the Osage Minerals 5 Council is suing my clients, yes? 6 A Yes. 7 Q And as the chairman of the Osage Minerals 8 Council, I wanted to ask you, what remedies is the Osage 9 Minerals Council seeking here against my clients? 10 A As requested in this document, removal. 11 Q All right. So the remedies you're seeking for, 12 there's actually several of them, we can go over it, but 13 one of them is so-called ejectment. Is that what you were 14 referring to when you were talking about removal? 15 A That's correct. 16 Q All right. Do you understand that there were 17 other remedies being sought by the Osage Minerals Council 18 in this lawsuit? 19 A Yes. 20 Q What do you understand those remedies to be? 21 A I think I have to know the answer to the first 22 one first before I answer too much of that. 23 Q All right, how can I help? 24 A Just go ahead and give me my other options as 25 you see.</p>	<p style="text-align: right;">Page 120</p> <p>1 A As much as you can give on this environment. We 2 believe that Chairman Yates had sent a letter to you, and 3 the United States government had sent a letter to you. 4 Q And what would the -- and I understand those 5 letters may have been relative to the issue of the mining 6 which is at the core of this lawsuit, but you understand 7 that there was a monetary demand connected to those? 8 A Yes. 9 Q What was that monetary demand? 10 A The lack of being able to produce our field. 11 Q I'm sorry, I didn't hear that. 12 A The production that we are unable to take care 13 of at this time. 14 Q So is that a monetary damage that flows from 15 alleged loss of oil and gas production on the 8400 acres 16 which is the subject of the wind farm? 17 A I can only speak about the wind farm footprint, 18 yes. 19 Q All right. So do you know what the monetary 20 value is of this alleged loss of oil and gas production on 21 the 8400 acres? 22 A Yes. 23 Q What is it? 24 A I will ask you to refer to the DEMD information 25 that was sent to us, Department of Energy Management and</p>
<p style="text-align: right;">Page 119</p> <p>1 Q Okay. 2 A I can't read it. 3 Q No, I understand. I'm a lawyer, and I got that. 4 The first two, 96 and 97, seek a declaratory judgment 5 relative to certain subject matters; is that fair? 6 A Yes. 7 Q And then paragraph 98 says, "Enter a judgment 8 assessing damages or providing any appropriate remedy, 9 whether monetary or sounding in equity, as determined to 10 the Osage Mineral Estate for unlawful or unauthorized 11 mining, excavation, or other work as set out in the 12 Federal Regulations." Did I read that right? 13 A Yes. 14 Q What did you understand that to mean? 15 A Following the -- following the Code of Federal 16 Regulations that protect my reservation. 17 Q All right. They talked about assessing damages 18 or providing any appropriate remedy, whether monetary or 19 sounding in equity. Do you see that? 20 A Yes. 21 Q And do you understand the difference between a 22 monetary remedy and one sounding in equity? 23 A Of course. 24 Q All right. And what is the monetary remedy that 25 the Osage Nation is seeking here?</p>	<p style="text-align: right;">Page 121</p> <p>1 Development. 2 Q Okay, I apologize. What did the DEMD say on the 3 subject matter that would be relevant to my inquiry? 4 A It talked about the production availability as 5 they see it. 6 Q All right. As I said earlier, though, there is 7 no production taking place on the 8400 acres, correct, new 8 production? 9 A If you say so, yes. 10 Q Well, I thought we agreed on the earlier. Did I 11 get that wrong? 12 A Well, I haven't been up there, so I can't even 13 answer that. I would feel like it is not. You asked 14 about the production that's already there and are we 15 receiving royalties, and that's correct. DEMD looked at 16 it from a different side as being experts in the field. 17 Q Okay. Do you seek monetary damages for the 18 value of the minerals that were used in the construction 19 of the wind farm? 20 A Yes. 21 Q All right, do you know the value of that? 22 A I won't guess those exact numbers. 23 Q All right. Do you know what the Osage Minerals 24 Council typically charges for, say, a ton of material that 25 might be removed from the Osage Estate?</p>

<p style="text-align: right;">Page 122</p> <p>1 A Under a permit?</p> <p>2 Q Yes, sir.</p> <p>3 A Ten percent as federal law dictates.</p> <p>4 Q Ten percent of the sale value?</p> <p>5 A Yes.</p> <p>6 Q What if it isn't sold?</p> <p>7 A What was the use of it? If it wasn't sold, why</p> <p>8 were they mining it?</p> <p>9 Q Okay. All right. We talked about two forms of</p> <p>10 potential monetary damages, one being, I'll say it my way,</p> <p>11 and if I get it wrong, please correct me, the impact of</p> <p>12 the wind farm development as you described, and then</p> <p>13 potentially the value of minerals. Any other economic or</p> <p>14 monetary damages that you can think of, Mr. Waller?</p> <p>15 A Not at this time.</p> <p>16 Q All right. And then we talked about matters</p> <p>17 sounding in equity. What do you understand matters</p> <p>18 sounding in equity to be in terms of the remedies that the</p> <p>19 Osage Minerals Council is seeking in this case?</p> <p>20 A I have many options. You would have to tell me</p> <p>21 what is the value for us.</p> <p>22 Q Well, we talked earlier, and I think you</p> <p>23 indicated that you were familiar with the distinction</p> <p>24 between monetary remedies and equitable remedies.</p> <p>25 A Yes, sir.</p>	<p style="text-align: right;">Page 124</p> <p>1 talking about monetary damages and then also ejectment or</p> <p>2 any other equitable remedy. Do you see that?</p> <p>3 A Yes.</p> <p>4 Q We've kind of walked through the monetary</p> <p>5 damages piece of this. Is there anything that you want to</p> <p>6 add to that beyond what we've talked about, primarily the</p> <p>7 oil and gas issues and the value of the minerals?</p> <p>8 Anything else you want to add in terms of the monetary</p> <p>9 piece of that?</p> <p>10 A Besides my court costs?</p> <p>11 Q Okay. Court costs, that's another. All right,</p> <p>12 anything else?</p> <p>13 A Not at this time.</p> <p>14 Q Okay. Now, let's talk about ejectment or any</p> <p>15 other equitable remedy this Court finds appropriate. What</p> <p>16 does the Osage Minerals Council have in mind for that?</p> <p>17 A Since I've never had the opportunity to visit</p> <p>18 with you, I don't know how to fill in the last sentence</p> <p>19 you gave me. Usually something that's this large would've</p> <p>20 been brought to my attention, and someone would have come</p> <p>21 and saw us.</p> <p>22 Q You're referring to the fact that my clients had</p> <p>23 not come to the Osage Minerals Council prior to the</p> <p>24 commencement of the building of the structures out there</p> <p>25 on the 8400 acres?</p>
<p style="text-align: right;">Page 123</p> <p>1 Q And we've talked about the monetary remedies,</p> <p>2 and now I'm into the equitable remedies. I'm asking you,</p> <p>3 what is your understanding what the OMC is seeking in</p> <p>4 terms of equitable remedies?</p> <p>5 A The loss of our production.</p> <p>6 Q The loss of the potential oil and gas</p> <p>7 production?</p> <p>8 A Yes.</p> <p>9 Q All right. That sounds monetary to me, so an</p> <p>10 equitable remedy, I'm trying to determine how an equitable</p> <p>11 remedy would necessarily implicate the loss of that oil in</p> <p>12 production, but I'm all ears if you can answer that</p> <p>13 question?</p> <p>14 A I can't give you a dollar amount at this time.</p> <p>15 Q Well, an equitable remedy also, let's go to the</p> <p>16 next section of the Complaint, which is paragraph 99.</p> <p>17 A Yes.</p> <p>18 Q And it says, "Enter a judgment finding</p> <p>19 defendants jointly and severally liable for any remedy,</p> <p>20 including monetary damages in an amount to be proven,</p> <p>21 ejectment, or any other equitable remedy this Court finds</p> <p>22 appropriate resulting from the trespass and continued</p> <p>23 trespass." Do you see that?</p> <p>24 A Yes.</p> <p>25 Q All right. So we're back again on this section</p>	<p style="text-align: right;">Page 125</p> <p>1 A I'm talking while I've been chairman, sir.</p> <p>2 Q Okay. All right. Well, really the question I'm</p> <p>3 asking is in this damages section the claim for relief.</p> <p>4 We know we have a lawsuit. What would satisfy the Osage</p> <p>5 Minerals Council?</p> <p>6 A I could give you some options.</p> <p>7 Q I'm all ears.</p> <p>8 A Take it away, the first one; that's why we're</p> <p>9 here. The second one looks at the loss of value of my</p> <p>10 production, and the third is something I think we should</p> <p>11 have been talking about and it'd have made this call a lot</p> <p>12 quicker is I think we're looking at permitting two</p> <p>13 different issues. One is a position without the Osage</p> <p>14 Minerals Council on my reservation. The other one is a</p> <p>15 position with my Osage Minerals Council on my reservation.</p> <p>16 There's many items I think we could have looked</p> <p>17 at, power grid. As you know I sit on federal White House</p> <p>18 committees. I understand the involvement there. My gas</p> <p>19 is taking care of Arizona as we speak, so things of that</p> <p>20 nature. And I believe you're a company that could even</p> <p>21 bring new elements to my reservation. You have the</p> <p>22 wherewithal.</p> <p>23 MR. ASHWORTH: Object to the form of that</p> <p>24 question.</p> <p>25 Q (BY MR. McCORMACK) I want to walk back through</p>

<p style="text-align: right;">Page 126</p> <p>1 those, and I appreciate very much, Mr. Waller, your</p> <p>2 answer. One of the things we're looking at here is we've</p> <p>3 talked about monetary issues, and then we've talked about</p> <p>4 ejectment and other equitable remedies. Mostly what I'm</p> <p>5 trying to find out is what is it that the Osage Minerals</p> <p>6 Council would want to satisfy it as a matter of damages.</p> <p>7 We've talked about the monetary piece, which is the</p> <p>8 purported diminishment in oil and gas production, and</p> <p>9 we've talked about the value of the minerals, and then on</p> <p>10 the other piece I want to talk about ejectment for a</p> <p>11 moment. Are you taking the position that this wind farm</p> <p>12 should be ejected from the 8400 acres?</p> <p>13 A As one of my options, yes.</p> <p>14 Q All right. And in connection with that, have</p> <p>15 you -- have you as the chairman of the Osage Minerals</p> <p>16 Council or anyone at your direction sought to evaluate the</p> <p>17 consequences of the ejectment option here relative to</p> <p>18 people not only like my own clients but to other people</p> <p>19 within the larger community in Oklahoma?</p> <p>20 MR. ASHWORTH: Object to the form.</p> <p>21 A Sir?</p> <p>22 Q (BY MR. McCORMACK) You can answer. He objected</p> <p>23 to the form.</p> <p>24 A I just look at what happens on my reservation.</p> <p>25 I can't compare the other elements to what is my situation</p>	<p style="text-align: right;">Page 128</p> <p>1 economic and logistical consequences would be to the</p> <p>2 landowners of the property?</p> <p>3 A I would only know that information from,</p> <p>4 actually, you.</p> <p>5 Q Okay. But my point is that is not something</p> <p>6 that you have looked into as a potential consequence of</p> <p>7 the equitable remedy of ejectment that the OMC at least</p> <p>8 technically is seeking in the Complaint that we're walking</p> <p>9 through?</p> <p>10 A No, you would have to show me what contracts</p> <p>11 we're talking about. I don't know that number.</p> <p>12 Q All right. And again, whether yourself or</p> <p>13 anyone else from the Osage Minerals Council has looked</p> <p>14 into the consequences to the owner of the project, my</p> <p>15 clients, in the event of an ejectment, the economic and</p> <p>16 other logistical consequences to my client if that were to</p> <p>17 occur?</p> <p>18 A I have not.</p> <p>19 Q All right. And you have not directed anyone at</p> <p>20 the OMC to look into that question?</p> <p>21 A For the third time, I have not.</p> <p>22 Q All right, all right. Has anyone from the OMC</p> <p>23 looked into the question of what the removal of the wind</p> <p>24 farm would mean to the delivery of electricity in the</p> <p>25 larger community?</p>
<p style="text-align: right;">Page 127</p> <p>1 here. We're the only ones in the world held under these</p> <p>2 CFR codes.</p> <p>3 Q Right. Well, and we've covered several subject</p> <p>4 matters already on this front, and I can get back to the</p> <p>5 question that you raised with me, which I very much</p> <p>6 appreciate.</p> <p>7 A Yes, sir.</p> <p>8 Q Which is how Enel might be able to be of more</p> <p>9 value to a larger set of issues than the one that we're</p> <p>10 fighting about, but I want to -- I still have to deal with</p> <p>11 the ones that are before me, Mr. Waller.</p> <p>12 A I understand.</p> <p>13 Q So I've got to ask. The ejectment issue,</p> <p>14 obviously the removal of the wind farm would be a major</p> <p>15 event. Would you agree with that?</p> <p>16 A For all parties concerned.</p> <p>17 Q Yes. And the question I'm asking you is whether</p> <p>18 the Osage Minerals Council, for example, has spoken to the</p> <p>19 landowners about that option and what consequences might</p> <p>20 befall them if that were to happen?</p> <p>21 A I have not talked to them.</p> <p>22 Q All right. Have you directed anyone to talk to</p> <p>23 them?</p> <p>24 A No, I have not.</p> <p>25 Q Have you directed anyone to evaluate what the</p>	<p style="text-align: right;">Page 129</p> <p>1 A Is some of the electricity used in Osage County?</p> <p>2 Q Well, I'll ask that question, and then I'll go</p> <p>3 back to the other question. But yes, is some of the</p> <p>4 electricity used in Osage County?</p> <p>5 A Okay. No, I haven't looked into that.</p> <p>6 Q All right. Do you know, for example, I know</p> <p>7 this because I'm a power lawyer, but whether or not the</p> <p>8 loss of that electricity would impact the ability of the</p> <p>9 local community to have power during peak periods of time</p> <p>10 of electricity demand?</p> <p>11 A If I knew where it hit the grid, I would know</p> <p>12 that answer better.</p> <p>13 Q All right. And I have to walk through these</p> <p>14 questions, Mr. Waller. I hope you understand that. But</p> <p>15 you personally have not and you have not asked anyone from</p> <p>16 the Osage Minerals Council to look into that question,</p> <p>17 correct?</p> <p>18 MR. PIPESTEM: Objection. Asked and answered.</p> <p>19 Q (BY MR. McCORMACK) I don't think I have on this</p> <p>20 issue, but go ahead. You can answer.</p> <p>21 A I have not.</p> <p>22 Q All right. Do you know what tax revenues the</p> <p>23 wind farm generates for the local school district and the</p> <p>24 local county?</p> <p>25 A I don't have that number in front of me.</p>

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1 Q Well, looking at this Complaint, if you look at
 2 page 13 of the Complaint, paragraph 63.
 3 A Please pull that up for me.
 4 Q Do you see here it says that in August --
 5 A Yes, sir.
 6 Q -- 2011 Shidler Public School Superintendent
 7 John Hertzog anticipated an infusion of about \$1.5 million
 8 a year into the Shidler School District from property
 9 taxes collected on Osage Wind's turbines. Do you see
 10 that?
 11 A Is that what they're getting today?
 12 Q Well, I'm just asking whether you've seen -- I'm
 13 asking you currently whether you've seen this paragraph in
 14 the Complaint that Osage Minerals Council filed?
 15 A Yes, I have.
 16 Q This is an allegation that Osage Minerals
 17 Council made. This is your allegation.
 18 A I knew that.
 19 Q Do you know today what type of tax revenue, if
 20 any, the Shidler School District is receiving from
 21 property taxes collected on the Osage Wind's turbines?
 22 A No, and it's called Shidler.
 23 Q Thank you, Shidler. I was wondering about that.
 24 Shidler, thank you. Do you know the answer to that
 25 question?

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1 A No, I do not.
 2 Q Does that matter to the Osage Minerals Council
 3 relative to the equitable remedy that it's seeking in this
 4 case?
 5 A Yes, because we pay all the schools in our
 6 county through our gross production tax. I'm very aware
 7 of it. I'm paying four school districts being a
 8 restricted landowner.
 9 Q Understood. In other words the Osage Minerals
 10 Council does care whether or not the removal of this wind
 11 farm might cost the Shidler School District as much as
 12 \$1.5 million a year in lost taxes; is that right?
 13 A I do.
 14 Q All right. And the same thing, do you know what
 15 kind of taxes that the Osage Wind wind farm is paying to
 16 the County of Osage in Oklahoma?
 17 A I do not.
 18 Q All right. Is that something that you as the
 19 chairman of the Osage Minerals Council cares about
 20 relative to the equitable remedies that it's seeking in
 21 this case?
 22 A Very interested.
 23 Q All right. You understand that if this wind
 24 farm were removed, those tax revenues would be gone, yes?
 25 A Yes.

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1 Q And that's not a matter of indifference to you,
 2 is it?
 3 MR. PIPESTEM: Objection. Asked and answered.
 4 Q (BY MR. McCORMACK) You can answer it.
 5 A I'm asked to give presentations at Shidler
 6 school for a coach. I care about every child I've got
 7 there because you've got Osages there too. So that's my
 8 answer.
 9 Q All right. Do you know how many people are
 10 permanently employed at the Osage Wind wind farm in the
 11 8400 acres?
 12 A No, I am not.
 13 Q Do you care about those potential lost jobs if
 14 this wind farm were removed?
 15 A Among other things.
 16 Q All right.
 17 A How many Osages are those working employees?
 18 Q I was going to ask you that, actually. That is
 19 on my mind as well. Do you know whether or not Osage
 20 Nation members are in fact employed by the wind farm?
 21 A You can only answer that.
 22 Q All right.
 23 A I'd like to say a lot. I direct every program.
 24 I'm not only in the oil business. I have my scholarships.
 25 I have my school funding by my shareholder. I do

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1 presentations at all these schools. I have been for
 2 years.
 3 I've got to be at a football lifting here at
 4 seven, folks, for my grandson.
 5 Q It's that time of year.
 6 Mr. Waller, do you know, I know there's been in
 7 the record in connection with this case evidence that
 8 between 200 and 250 people were employed as construction
 9 personnel during the construction of the wind farm. Do
 10 you know whether or not any of the members of the Osage
 11 Nation were among that 200-250 employees?
 12 A I do not.
 13 Q We've walked through a number of items that
 14 would be impacted by the removal of this wind farm, and I
 15 know that technically you're asking for the removal of the
 16 wind farm. But your answers suggest to me that you're not
 17 indifferent to the consequences of the removal of the wind
 18 farm to a number of constituencies, both the taxing
 19 authorities, the schools, private landowners, others. Is
 20 that a fair summary of your testimony?
 21 A I'm the chairman of the Osage Minerals Council.
 22 I'm not going to cut my children's future off. I sit on
 23 White House calls every month of what are we going to do
 24 to save ourselves. Actually, I've been promoting every
 25 kind of development across the nation on Indian country;

<p>Page 134</p> <p>1 solar, turbine, everything. I've just got to have a 2 better fit here where I'm located and elected to take care 3 of this reservation. 4 Q Understood. And this has been very helpful to 5 me, and I appreciate it. I guess the question is there's 6 a -- the remedy section here is a bit wide open. It talks 7 about monetary remedies, and then it talks about equitable 8 remedies, which basically are fair remedies. I guess 9 we've talked about the monetary, and you've said 10 technically you've asked for ejection, but you understand 11 the consequence of that. What else -- what else would you 12 like Enel to do to make this right? 13 A Build my hospital. I don't even have a hospital 14 here. I've had every large corporation come through, take 15 the billions, then what do I have left? You might be 16 coming in to something that I've got to have. I've got to 17 have this power to bring to my people on the reservation. 18 Do you think that powerline is going to help in California 19 out there on those 217 tribes that are burned to the 20 ground? You and I have got to look at working and taking 21 care of my homeland. I mean that. I'm serious about all 22 of what I say. 23 Q I understand, and I appreciate and respect it. 24 All right, I still have my job to do, though. I'm asking 25 about remedies, and we've seen the monetary issue.</p>	<p>Page 135</p> <p>1 state, and I know my children are always yelling at me 2 about renewables and about what the future's going to look 3 like, et cetera. 4 And I wondered when I was reading all these 5 Osage Minerals Council's minutes and there were people 6 talking about wind and what does that mean for the future, 7 and I am curious. That's why I asked these questions, 8 maybe not as artfully, when we were talking about the 9 future of wind in Osage County. As I understand it, Osage 10 County has got really good wind. So I guess the question 11 is, does the Osage Minerals Council see wind or renewables 12 as one of the elements in its future relative to the 13 management of the Osage Estate? 14 A I'll have to get done with this before I say 15 that. 16 Q That's fair, that's fair, okay. All right, I 17 think we've covered, then, the equitable and monetary 18 issues. Well, let me ask you, going back to my job here. 19 We've talked about equitable remedies, we've talked about 20 ejection. Were there other equitable remedies that you 21 had in mind in terms of future activities on the site or 22 anything along those lines in terms of the damages that 23 you've sought in this case, the Osage Minerals Council? 24 A I can only say it would only be through our 25 involvement.</p>
<p>Page 135</p> <p>1 A Yes. 2 Q We've seen the nuclear option of the ejection, 3 and I was curious about other equitable remedies that 4 might be appropriate to the particular circumstances out 5 there at that 8400 acres from your perspective as the 6 chairman of the party that sued my client. 7 A Yes. 8 Q Anything else on your list of economic or 9 equitable remedies that the Osage Minerals Council is 10 seeking from my client as a result of this lawsuit? 11 A On behalf of my shareholder? 12 Q Yes, sir. 13 A Education. We have many mutual help housing. 14 Maybe we can help them somewhere on that grid. The future 15 is going to have to have us. 16 Q Well, and I appreciate these conversations, 17 first of all. I very much appreciate the conversation 18 with you. As I was getting ready for the deposition, I 19 was thinking in a larger sense that the Osage Minerals 20 Council, and we can go over it, I've seen that there were 21 people at the Osage Minerals Council who talked about, 22 wait a minute, wind might be the future, we probably have 23 to do something about wind. I can ask you about that when 24 we get to it, but this is sometimes more effective. I 25 thought to myself, I'm from Texas, I'm from an oil and gas</p>	<p>Page 136</p> <p>1 Q All right, okay. I know I was going to ask you 2 this question, too, which is on the remedy side of this. 3 A Yes. 4 Q I know we've talked about and we saw it earlier 5 in some of the interviews that you gave, and I know that 6 the judge in this case when he issued the order denying 7 the injunction relative to the original lawsuit mentioned 8 both federal and Oklahoma state public policies in favor 9 of renewables. How do those public policies, that of the 10 federal government and the state of Oklahoma, factor into 11 your thinking about remedies in this case, if they do? 12 A If I had a company who came to me and asked me 13 to go to my federal team to develop some project in my 14 Osage Reservation that I felt comfortable with and 15 directed by my council, I think it would be a great 16 partnership. I'm going to be dealing with them anyway. 17 Q Well, let me ask you this. I know, and again, 18 we can walk through all these minutes because I've seen 19 them, but we know that in 2013 when the first 20 communications were made with my client about -- 21 A Yes. 22 Q -- whether or not there was a mineral element to 23 this, that the BIA struggled with whether there actually 24 was and said that they were struggling with whether there 25 was. Do you remember that part of this?</p>

<p>Page 138</p> <p>1 MR. PIPESTEM: Objection. I'm instructing the</p> <p>2 witness not to answer the question. It involves a -- you</p> <p>3 cited something in 2013 prior to bringing this litigation.</p> <p>4 I'm instructing the witness not to answer.</p> <p>5 MR. McCORMACK: Well, this, I think, goes to my</p> <p>6 client's good faith, not the Osage Nation's purported bad</p> <p>7 faith.</p> <p>8 Q (BY MR. McCORMACK) And that is in 2013 you</p> <p>9 understood that the BIA wasn't sure whether or not there</p> <p>10 was a minerals component to what the wind farm was doing.</p> <p>11 Is that fair from your observations of what was going on</p> <p>12 at that time?</p> <p>13 MR. PIPESTEM: Again, I'm going to instruct the</p> <p>14 witness not to answer. I'm objecting not only on the</p> <p>15 basis of -- well, the Court has ordered that that</p> <p>16 information is not relevant to this case. So again, I'm</p> <p>17 instructing Chairman Waller not to answer the question.</p> <p>18 MR. McCORMACK: And I'm going to make my record</p> <p>19 clear, too. I'm talking about my client's good faith, and</p> <p>20 you have been doing an immense amount of discovery on that</p> <p>21 subject matter. That goes -- and our regulatory person</p> <p>22 was inquired about everything that went back to 2011</p> <p>23 because that goes to my client's good faith, and I'm</p> <p>24 entitled to inquire about my client's good faith. I'm not</p> <p>25 doing anything about any alleged bad faith. I'm asking</p>	<p>Page 140</p> <p>1 going to keep asking the question and we'll let the Court</p> <p>2 decide.</p> <p>3 MR. PIPESTEM: Absolutely.</p> <p>4 Q (BY MR. McCORMACK) Do you understand why it is</p> <p>5 my client might have in good faith believed that there was</p> <p>6 not a mineral consequence to the development of the wind</p> <p>7 farm on the 8400 acres?</p> <p>8 MR. PIPESTEM: Objection. For the reasons</p> <p>9 stated repeatedly in this deposition, I'm instructing the</p> <p>10 witness not to answer the question.</p> <p>11 Q (BY MR. McCORMACK) Was there a doubt in your</p> <p>12 mind, Mr. Waller, at any time in the 2013-2014 period as</p> <p>13 to whether or not there was a mineral aspect to the</p> <p>14 project that my client was engaged in on the 8400 acres?</p> <p>15 MR. PIPESTEM: Objection. For the reasons</p> <p>16 stated, I'm instructing the witness not to answer the</p> <p>17 question.</p> <p>18 Q (BY MR. McCORMACK) Did you have discussions</p> <p>19 with other members of the Osage Minerals Council in the</p> <p>20 2013-2014 period as to whether or not there was indeed a</p> <p>21 minerals element to the construction project that Osage</p> <p>22 Wind was building on the 8400 acres?</p> <p>23 MR. PIPESTEM: Objection. I'm instructing the</p> <p>24 witness not to answer the question on the basis of</p> <p>25 relevance as determined by the Court and because of</p>
<p>Page 139</p> <p>1 Mr. Waller, who was familiar with all the issues at the</p> <p>2 time, whether or not there was a struggle even within the</p> <p>3 BIA in 2013 as to whether or not mineral rights would be</p> <p>4 implicated by this wind farm. Is that a fair question?</p> <p>5 MR. PIPESTEM: Objection. I'm instructing the</p> <p>6 witness not to answer for the reasons of irrelevance based</p> <p>7 on the Court's order.</p> <p>8 MR. McCORMACK: All right, and I'm going to keep</p> <p>9 asking the questions because I find that instruction</p> <p>10 inappropriate.</p> <p>11 Q (BY MR. McCORMACK) I know that there are --</p> <p>12 there are minutes in which the BIA Superintendent Phillips</p> <p>13 comes and discusses these issues. Do you remember that</p> <p>14 issue, that is, whether or not the BIA was having</p> <p>15 difficulty deciding whether or not there was a mineral</p> <p>16 element to this wind farm?</p> <p>17 MR. PIPESTEM: Objection. For the reasons</p> <p>18 stated before, I'm instructing the witness not to answer</p> <p>19 the question.</p> <p>20 Q (BY MR. McCORMACK) Do you understand why my</p> <p>21 client might have in good faith concluded that there was</p> <p>22 not a mineral element to the building of this facility?</p> <p>23 MR. PIPESTEM: Objection. For the same reasons</p> <p>24 stated, I'm instructing the witness not to answer.</p> <p>25 MR. McCORMACK: I find that incredible, but I'm</p>	<p>Page 141</p> <p>1 privilege.</p> <p>2 Q (BY MR. McCORMACK) Well, it's now 2021 and</p> <p>3 we're here talking about this lawsuit, and on any basis</p> <p>4 between 2014, the date that the lawsuit began, and today,</p> <p>5 have you at least considered the prospect that my client</p> <p>6 was acting in good faith when it concluded it did not have</p> <p>7 a mineral element to the construction of the wind farm on</p> <p>8 the 8400 acres?</p> <p>9 MR. PIPESTEM: For the reasons stated, I'm</p> <p>10 objecting on the basis of relevance as determined by the</p> <p>11 Court. I'm instructing the witness not to answer.</p> <p>12 MR. McCORMACK: I made that question from the</p> <p>13 period, although I disagree 100 percent with what you're</p> <p>14 doing here --</p> <p>15 MR. PIPESTEM: That's okay. You can do that all</p> <p>16 day. We're going to go through this process. That's</p> <p>17 what --</p> <p>18 MR. McCORMACK: I understand.</p> <p>19 MR. PIPESTEM: So your commentary is unwelcome.</p> <p>20 If you want me to answer a question, I will.</p> <p>21 MR. McCORMACK: I was just going to say that</p> <p>22 that last question was couched in the way that your</p> <p>23 objection would not be applicable, which was from two</p> <p>24 thousand -- from December of 2014 to today. So now you're</p> <p>25 going to instruct him not to answer in that period too?</p>

<p style="text-align: right;">Page 142</p> <p>1 MR. PIPESTEM: I am. Not only because of the</p> <p>2 time because of relevance of the question as determined by</p> <p>3 the Court.</p> <p>4 MR. McCORMACK: The good faith of my client is</p> <p>5 not relevant to the equitable remedies you seek in this</p> <p>6 case. That's interesting. Is that your position?</p> <p>7 MR. PIPESTEM: Are you asking that question --</p> <p>8 if you're asking -- let me clarify.</p> <p>9 Objection. I'm directing the witness not to</p> <p>10 answer the question on the basis of relevance as</p> <p>11 determined by the Court.</p> <p>12 MR. McCORMACK: So my client's good faith is not</p> <p>13 relevant to the equitable remedies that's being sought?</p> <p>14 That's what I'm asking you, Counsel?</p> <p>15 MR. PIPESTEM: I'm not here to answer your</p> <p>16 questions in a deposition. I'm a lawyer for the Osage</p> <p>17 Minerals Council. So if you want to subpoena me and get</p> <p>18 questions for me, then you can do that.</p> <p>19 MR. McCORMACK: I'm more interested in your</p> <p>20 position so that I can present it to the Court.</p> <p>21 MR. PIPESTEM: You've got my position on the</p> <p>22 record.</p> <p>23 MR. McCORMACK: You instructed him not to</p> <p>24 answer, but you didn't answer my question. I'm just</p> <p>25 trying to find out what your position is. You're saying</p>	<p style="text-align: right;">Page 144</p> <p>1 don't mind. I'm going to switch to another subject</p> <p>2 matter. Is that good?</p> <p>3 MR. PIPESTEM: Chairman Waller, would a break</p> <p>4 okay with you?</p> <p>5 THE WITNESS: How long?</p> <p>6 THE VIDEOGRAPHER: We're off the record at</p> <p>7 2:42 p.m.</p> <p>8 (BREAK FROM 2:42 TO 2:54)</p> <p>9 THE VIDEOGRAPHER: Back on the record at</p> <p>10 2:54 p.m.</p> <p>11 Q (BY MR. McCORMACK) Welcome back, Mr. Waller.</p> <p>12 Just quickly, and I have spoken to counsel for the OMC in</p> <p>13 the break, and the next section of this deposition was</p> <p>14 intending to walk through relevant OMC minutes and events</p> <p>15 that led up to the dispute and then ultimately resulted in</p> <p>16 a lawsuit filed on November 21, 2014, which is the lawsuit</p> <p>17 that we're in currently. In light of the -- in light of</p> <p>18 the position taken by counsel for the OMC that he is not</p> <p>19 going to allow any questions on these subject matters to</p> <p>20 be answered in the timeframe prior to November 21, 2014, I</p> <p>21 said that I would simply preserve my objection to that</p> <p>22 instruction and pick up on November 21, 2014, with a full</p> <p>23 reservation of rights, so that's what I'm going to do.</p> <p>24 MR. McCORMACK: Counsel, I'm happy to have any</p> <p>25 additional statements you may wish to make on the record</p>
<p style="text-align: right;">Page 143</p> <p>1 that my client's good faith is in your view irrelevant to</p> <p>2 the equitable remedies that are being sought by the Osage</p> <p>3 Minerals Council in this case?</p> <p>4 MR. PIPESTEM: I have made objections. I've</p> <p>5 instructed the witness not to answer for the reasons that</p> <p>6 I stated, and I'm not going to say anything more about it.</p> <p>7 If you want to seek the Court's intervention, that's</p> <p>8 certainly your right.</p> <p>9 MR. McCORMACK: Counsel, I think I'm entitled to</p> <p>10 know what your position is. If your position is that my</p> <p>11 client's good faith is irrelevant to the equitable</p> <p>12 remedies being sought by the Osage Minerals Council and</p> <p>13 that is the reason why you're instructing this witness not</p> <p>14 to answer, I think I'm entitled to know that.</p> <p>15 MR. PIPESTEM: I have provided the basis for my</p> <p>16 objection, and I'm not going to say anything more about</p> <p>17 it. Again, if you think that's insufficient, we can bring</p> <p>18 the matter before the judge.</p> <p>19 MR. McCORMACK: Okay. I think whatever your</p> <p>20 position is, and you haven't told me necessarily what it</p> <p>21 is on that particular question, the effect is the same,</p> <p>22 which is you're not allowing me to inquire about my</p> <p>23 client's good faith in a case where equitable remedies are</p> <p>24 being sought.</p> <p>25 All right, why don't we take a break, if you</p>	<p style="text-align: right;">Page 145</p> <p>1 at this point.</p> <p>2 MR. PIPESTEM: Okay. Yes, I'm going to instruct</p> <p>3 the witness not to answer on any matters deemed irrelevant</p> <p>4 by the Court. I'm also going to instruct the witness not</p> <p>5 to answer any questions that would violate the</p> <p>6 attorney-client privilege or any other privilege,</p> <p>7 including the common interest privilege with the United</p> <p>8 States.</p> <p>9 What I would recommend is that if you want to</p> <p>10 ask each question because I may have objections to the</p> <p>11 question based on form, the government may have objections</p> <p>12 based on the question for other reasons. But if we need</p> <p>13 to get that on the record and you want do that, certainly</p> <p>14 we're glad to do that.</p> <p>15 MR. McCORMACK: Okay, thank you, Counsel. To me</p> <p>16 I think it was just important to understand that I had</p> <p>17 intended to ask this witness as the chairman of the Osage</p> <p>18 Minerals Council and as someone who this morning I was</p> <p>19 able to demonstrate was familiar with the processes of the</p> <p>20 Osage Minerals Council from 2010 forward, I was planned</p> <p>21 ask him a series of questions relevant to that timeframe,</p> <p>22 but we've all agreed that I'm not going to get any answers</p> <p>23 today.</p> <p>24 And so I appreciate, Counsel, your statement,</p> <p>25 and I understand that if you have additional objections</p>

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1 you'll make them. But again I'll just say for the record
 2 I reserve my rights relative to all the instructions that
 3 stopped my inquiry from anything that happened prior to
 4 November 21, 2014. With that, let's set sail on this next
 5 section.
 6 **Q (BY MR. McCORMACK)** Let me ask you quickly to
 7 look at what I have marked as or I will mark as
 8 Exhibit 161, which is, for the concierge, under tab 75.
 9 It is a letter dated, ironically, November 21, 2014 from
 10 the Osage Nation to Enel Green Power North America. Let
 11 me ask you, Mr. Waller, have you seen this letter before?
 12 (WHEREUPON, Exhibit 161 was marked for
 13 identification.)
 14 A Yes.
 15 **Q Did you have any role in preparing the letter?**
 16 A No.
 17 **Q All right. By this time, I believe you were**
 18 **chair of the OMC, correct, November of 2014?**
 19 A Yes.
 20 **Q This was one of those issues I talked to you**
 21 **about previously when I was looking at the Osage Nation**
 22 **Constitution, which was where did the authority of the**
 23 **Osage Minerals Council stop and where did the authority of**
 24 **the principal chief begin. And I think you told me that**
 25 **the principal chief did have the right to speak on behalf**

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1 of the Osage Nation, and I think Exhibit 161 is a
 2 reflection of that. So you understood that this was
 3 someone from the Office of the Principal Chief writing
 4 directly to my client about the status of this issue in
 5 November of 2014, yes?
 6 MR. PIPESTEM: Objection. Mischaracterization
 7 or Chairman Waller's former testimony.
 8 **Q (BY MR. McCORMACK)** You can answer the question.
 9 **Mr. Waller, you're up.**
 10 A Repeat my question.
 11 **Q Let me just start over.**
 12 A Thank you.
 13 **Q From your testimony earlier, I understood that**
 14 **even though issues might be within the purview of the**
 15 **Osage Minerals Council, the Office of the Principal Chief**
 16 **still had the right to act on behalf of the Osage Minerals**
 17 **Council when the chief felt that was appropriate; is that**
 18 **fair?**
 19 MR. PIPESTEM: Objection. Mischaracterization
 20 of Chairman Waller's former testimony earlier in this
 21 deposition.
 22 **Q (BY MR. McCORMACK)** You can answer the question.
 23 **Let me try again. This is not complicated. This is a**
 24 **situation where the acting Principal Chief Raymond Redcorn**
 25 **is writing to my client dealing with issues that implement**

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1 **or implicate the Osage Minerals Council and the Mineral**
 2 **Estate at the property, yes?**
 3 A Yes.
 4 **Q All right. And you didn't have any problem with**
 5 **that because you told me earlier that the -- that the**
 6 **principal chief had the right to do that. That was all I**
 7 **was trying to get to; is that fair?**
 8 MR. PIPESTEM: Objection. Mischaracterization
 9 of Chairman Waller's earlier testimony in his deposition.
 10 MR. McCORMACK: Okay, tell me how
 11 mischaracterizes his earlier testimony.
 12 MR. PIPESTEM: Is that is question to me?
 13 MR. McCORMACK: Yes.
 14 MR. PIPESTEM: Chairman Waller testified that
 15 the chief has authority when the Minerals Council
 16 authorizes him to speak. He also testified that he agreed
 17 with Osage Constitution when it says the chief has a right
 18 to object to a lease if it's inconsistent with Osage law,
 19 not for any reason. So it's a very limited basis whereby
 20 the chief or the Office of Principal Chief has a role over
 21 Osage mineral production. You also read from a part or
 22 the Constitution, and Chairman Waller did as well, about
 23 the independence of the Osage Minerals Council. That's
 24 the basis.
 25 MR. McCORMACK: I appreciate that clarification.

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1 I'll take it.
 2 **Q (BY MR. McCORMACK)** One of the items that your
 3 counsel mentioned is when the Osage Minerals Council asks
 4 the principal. (inaudible) the Osage Minerals Council ask
 5 the principal chief have the Principal Chief Raymond
 6 Redcorn to send this letter on November 21, 2014?
 7 MR. PIPESTEM: Counsel, I don't know. I
 8 apologize, but I think there was some technological
 9 problem with your question. I couldn't hear part of it.
 10 I don't know if I'm the only one or whether others on the
 11 Zoom --
 12 MR. McCORMACK: I'm happy to repeat it.
 13 MR. PIPESTEM: I apologize for that.
 14 MR. McCORMACK: Not at all. One thing lawyers
 15 aren't responsible for is technology. I'll start the
 16 question over.
 17 **Q (BY MR. McCORMACK)** Your counsel gave me a
 18 clarification from his perspective of some of the history
 19 here in the prior testimony, and one of those was that the
 20 principal chief might become involved in Osage Minerals
 21 Council's matters when the Osage Minerals Council asks him
 22 to. And then my question was is this letter that was sent
 23 on November 21, 2014 by acting Principal Chief Raymond
 24 Redcorn done as a result of a request from the Osage
 25 Minerals Council?

<p>Page 150</p> <p>1 A No.</p> <p>2 Q All right. And so do you know on what basis,</p> <p>3 then, that acting Principal Chief Raymond Redcorn sent</p> <p>4 this letter?</p> <p>5 A You said he was acting chief, didn't you?</p> <p>6 Q Yes, sir.</p> <p>7 A There's your answer.</p> <p>8 Q All right. And so was it your understanding</p> <p>9 that if the principal chief decided to communicate on a</p> <p>10 subject matter involving Osage Minerals Council and issues</p> <p>11 subject to Osage Minerals Council's purview that that was</p> <p>12 an appropriate exercise of the principal chief's</p> <p>13 authority?</p> <p>14 A We were CCed on this letter.</p> <p>15 Q I'm sorry, I didn't hear that answer. We were?</p> <p>16 A CCed on this letter.</p> <p>17 Q Understood.</p> <p>18 A That's where we got it.</p> <p>19 Q I don't want to spend a lot of time</p> <p>20 unnecessarily. I'm just trying to find out, did you know</p> <p>21 about this letter before it went out? How about that?</p> <p>22 A Not until it was delivered.</p> <p>23 Q All right. And was that -- was that, and I'm</p> <p>24 trying to find this out too, was that a normal practice</p> <p>25 that the Office of the Principal Chief might send a letter</p>	<p>Page 152</p> <p>1 Is Raymond Redcorn a lawyer?</p> <p>2 MR. PIPESTEM: Are you asking me, Counsel?</p> <p>3 MR. McCORMACK: No, I'm asking Mr. Waller.</p> <p>4 MR. PIPESTEM: Okay.</p> <p>5 A Not to my knowledge. I don't know.</p> <p>6 Q (BY MR. McCORMACK) And you're not a lawyer, are</p> <p>7 you?</p> <p>8 A No.</p> <p>9 Q All right. And did you have a conversation with</p> <p>10 Mr. Redcorn, you can answer this question yes or no, did</p> <p>11 you have a conversation with Mr. Redcorn on or about</p> <p>12 November 21, 2014 after you received a copy of this</p> <p>13 letter?</p> <p>14 MR. PIPESTEM: Objection. I'm instructing the</p> <p>15 witness not to answer for reasons of executive privilege</p> <p>16 between leaders of the Osage Nation, and also there may</p> <p>17 have been legal counsel present at that conversation. So</p> <p>18 the witness should not be answering questions related to</p> <p>19 conversations that would have -- that might have occurred</p> <p>20 with legal counsel present, if so. That's my objection</p> <p>21 and my instruction.</p> <p>22 MR. McCORMACK: Well, your instruction is based</p> <p>23 upon the theory that maybe there was a lawyer involved</p> <p>24 with absolutely no factual predicate for that; is that</p> <p>25 right?</p>
<p>Page 151</p> <p>1 on issues that implicate the Osage Minerals Council</p> <p>2 without the chairman of the Osage Minerals Council knowing</p> <p>3 about it?</p> <p>4 A This is a letter from the assistant chief. I</p> <p>5 cannot deliver the answer to that.</p> <p>6 Q Well, he saying he's acting principal chief.</p> <p>7 That's how he signed it. So would that -- would that help</p> <p>8 you answer the prior question?</p> <p>9 A I did not direct the executive side.</p> <p>10 Q All right. I think what I've learned is that</p> <p>11 you learned about this letter probably about the same time</p> <p>12 my client did, when you received a copy of it; is that</p> <p>13 fair?</p> <p>14 A Yes.</p> <p>15 Q Did you have a conversation with Raymond Redcorn</p> <p>16 or anybody else from the principal chief's office about</p> <p>17 this letter?</p> <p>18 MR. PIPESTEM: Objection. I'm going to instruct</p> <p>19 the witness not to answer on the basis of privilege,</p> <p>20 relevance.</p> <p>21 MR. McCORMACK: I don't get the privilege</p> <p>22 question. Well, it doesn't matter what I think. I'm</p> <p>23 asking -- in privilege you have to set up a basis for</p> <p>24 privilege before you just assert the privilege.</p> <p>25 Q (BY MR. McCORMACK) Well, let me ask you this.</p>	<p>Page 153</p> <p>1 MR. PIPESTEM: Well, I'm not building the</p> <p>2 factual predicate here, Counsel, you are.</p> <p>3 MR. McCORMACK: And I didn't ask a question that</p> <p>4 was privileged. I asked him whether he had a conversation</p> <p>5 with Mr. Redcorn, period. That's what I asked him.</p> <p>6 There's no privilege implicated by that whatsoever.</p> <p>7 MR. PIPESTEM: Certainly there are. If counsel</p> <p>8 was present when the chairman of the Minerals Council and</p> <p>9 the assistant chief, or acting principal chief in this</p> <p>10 circumstance, had a conversation, that's a privileged</p> <p>11 conversation.</p> <p>12 MR. McCORMACK: No, the fact of whether or not</p> <p>13 he had the conversation, even if it were a privileged</p> <p>14 conversation, the fact that the conversation occurred is</p> <p>15 not privileged. Do you think it is?</p> <p>16 MR. PIPESTEM: I will say you can ask that</p> <p>17 question on whether or not a conversation occurred or not.</p> <p>18 MR. McCORMACK: That's the question I asked.</p> <p>19 Q (BY MR. McCORMACK) Did a conversation occur</p> <p>20 with Mr. Redcorn between you, Mr. Waller, and Mr. Redcorn</p> <p>21 as an outgrowth of this letter that Mr. Redcorn sent on</p> <p>22 November 21, 2014, yes or no?</p> <p>23 A No.</p> <p>24 Q Okay. Now I will ask you why? I mean, the way</p> <p>25 my brain works, logically I would pick up the phone and</p>

<p>Page 154</p> <p>1 ask someone who was speaking on behalf of Osage Minerals</p> <p>2 Council why they sent the letter. You didn't do that?</p> <p>3 MR. PIPESTEM: Objection. Asked and answered.</p> <p>4 Q (BY MR. McCORMACK) You can answer.</p> <p>5 A It would only be in executive session.</p> <p>6 Q Okay. So you're saying maybe you did have a</p> <p>7 conversation with him, but it would've been in executive</p> <p>8 session?</p> <p>9 A No, I'm saying that if it had it would be in</p> <p>10 executive. We don't -- we do not open that discussion</p> <p>11 between the chief and ourselves unless it is warranted.</p> <p>12 Q Okay, I'm a little confused. Are you now saying</p> <p>13 this conversation -- well, that there may have been a</p> <p>14 conversation or there may not have been a conversation,</p> <p>15 but if there were a conversation it would be subject to</p> <p>16 executive privilege? Is that what you're saying?</p> <p>17 A If requested by the chairman.</p> <p>18 Q But you don't remember one way or the other</p> <p>19 whether you had -- withdrawn. I think you said --</p> <p>20 A Thank you.</p> <p>21 Q I think you said you do not remember having a</p> <p>22 conversation with Mr. Redcorn about this letter. Maybe</p> <p>23 this is the easiest way to deal with this; is that right?</p> <p>24 A Yes.</p> <p>25 Q All right.</p>	<p>Page 156</p> <p>1 Q (BY MR. McCORMACK) You can answer it.</p> <p>2 A No, I do not.</p> <p>3 Q Okay. And then the next sentence says, "As you</p> <p>4 know, we believe that Enel Green Power NA may have already</p> <p>5 destroyed Osage cultural resources, including the remains</p> <p>6 of our ancestors." Do you see that?</p> <p>7 A Yes.</p> <p>8 Q Do you have any evidence of that?</p> <p>9 A I did not write that letter.</p> <p>10 Q Understood. I'm asking you whether you are</p> <p>11 aware of any evidence that Enel Green Power may have</p> <p>12 destroyed Osage cultural resources including the remains</p> <p>13 of ancestors?</p> <p>14 A Did you have any inadvertent finds under section</p> <p>15 106? I don't know of any is what my answer is.</p> <p>16 Q And again, I know that there was a -- affidavits</p> <p>17 filed in connection with this lawsuit in which issues of</p> <p>18 this nature were address. Do you remember -- you told me</p> <p>19 you had read as much of the legal record as you could</p> <p>20 tolerate. Do you remember seeing affidavits from my</p> <p>21 client which provided significant reports on whether or</p> <p>22 not there were sites of cultural significance on the</p> <p>23 8400 acres?</p> <p>24 A Not verbatim, but yes, I've seen them.</p> <p>25 Q All right. And that in fact a consultant that</p>
<p>Page 155</p> <p>1 MR. McCORMACK: Let me ask to show you on the</p> <p>2 second paragraph here, if you'll go to the second</p> <p>3 paragraph of this letter. If the concierge will put the</p> <p>4 second paragraph of the letter up.</p> <p>5 THE WITNESS: Please.</p> <p>6 Q (BY MR. McCORMACK) Okay. And it says, "As a</p> <p>7 show of good faith, we respectfully request that you</p> <p>8 suspend construction of the wind energy facilities in our</p> <p>9 homeland." So on November 21, 2014, acting Principal</p> <p>10 Chief Raymond Redcorn asked Enel to suspend construction</p> <p>11 of the wind energy facilities in the Osage homeland. Do</p> <p>12 you see that?</p> <p>13 A Yes.</p> <p>14 Q Do you remember having a conversation on that</p> <p>15 subject matter at any time with the folks from the</p> <p>16 principal chief's office, or they were doing this all on</p> <p>17 their own?</p> <p>18 MR. PIPESTEM: Objection. Compound question.</p> <p>19 Q (BY MR. McCORMACK) You can answer.</p> <p>20 A No.</p> <p>21 Q You don't remember having a conversation on that</p> <p>22 subject matter on November 21 or any other time, that is,</p> <p>23 that the Office of the Principal Chief had advised Enel to</p> <p>24 stop working on the project?</p> <p>25 MR. PIPESTEM: Objection. Asked and answered.</p>	<p>Page 157</p> <p>1 Enel had retained had spoken with and communicated with</p> <p>2 the persons in the Osage Nation who were responsible for</p> <p>3 such things. Do you recall that?</p> <p>4 A Dr. Hunter's office, Tribal Historic</p> <p>5 Preservation Office.</p> <p>6 Q That's correct.</p> <p>7 A I wasn't privy to that.</p> <p>8 Q All right. And so did you know that her office</p> <p>9 had been spoken with and inquired about relative to any</p> <p>10 issues of whether or not there were cultural -- areas of</p> <p>11 cultural significance on the 8400 acres?</p> <p>12 A I wasn't sent the information.</p> <p>13 Q All right. Anyway, getting back to the bottom</p> <p>14 line here, you're not aware of any evidence that Enel</p> <p>15 Green Power may have destroyed Osage cultural resources,</p> <p>16 including the remains of ancestors; is that a fair</p> <p>17 statement?</p> <p>18 A I do not.</p> <p>19 Q All right. After this letter of November 21,</p> <p>20 2014 was sent to Enel, do you recall in the chronology</p> <p>21 what occurred next in terms of whether or not Enel</p> <p>22 responded to this letter and interacted with the Office of</p> <p>23 the Principal Chief as a result of the letter?</p> <p>24 A I don't remember.</p> <p>25 Q All right. We now know and we know from the</p>

<p>Page 158</p> <p>1 instructions today too that the lawsuit was filed on</p> <p>2 November 21, 2014. What role did you play in managing the</p> <p>3 litigation once the lawsuit was filed, if any?</p> <p>4 A Directed it to my legal counsel.</p> <p>5 Q Would that be the counsel that is representing</p> <p>6 you today?</p> <p>7 A That's not who started the case.</p> <p>8 Q Okay. Let me show you what has been previously</p> <p>9 marked. I don't know if it's been previously marked or</p> <p>10 not, but let me see. No, it hasn't been.</p> <p>11 Let me show you a document. I believe we're at</p> <p>12 Exhibit 162 now. This is a letter dated May 13, 2015 from</p> <p>13 Enel Green Power to the Honorable Geoffrey Standing Bear,</p> <p>14 the Honorable Raymond Redcorn and the Honorable Everett</p> <p>15 Waller. We'll mark that.</p> <p>16 MR. McCORMACK: Mr. Concierge, we're at 162; is</p> <p>17 that right?</p> <p>18 THE COURT REPORTER: That's right.</p> <p>19 (Whereupon a discussion was held that was not</p> <p>20 reported)</p> <p>21 MR. McCORMACK: Why don't you put the body of</p> <p>22 the letter up so that we all can read it.</p> <p>23 Q (BY MR. McCORMACK) This letter was written on</p> <p>24 May 13, 2015 and was sent to, as we said, to Principal</p> <p>25 Chief Standing Bear, Raymond Redcorn and yourself. Do you</p>	<p>Page 160</p> <p>1 preferred to resolve it through litigation?</p> <p>2 A We were already in litigation.</p> <p>3 Q Understood. And this is a letter seeking to</p> <p>4 maybe have a dialogue, and your response to it was no, or</p> <p>5 not interested at this time, or let's see where the</p> <p>6 litigation goes? What was your reaction to this opening,</p> <p>7 if you will?</p> <p>8 A As chairman I was in litigation. I cannot speak</p> <p>9 on behalf of the chief or assistant.</p> <p>10 Q All right. Let me show you the next item, which</p> <p>11 I'll mark as, I think, 163 which is under tab 29. This is</p> <p>12 a letter from you dated May 26, 2015.</p> <p>13 (WHEREUPON, Exhibit 163 was marked for</p> <p>14 identification.)</p> <p>15 A Yes.</p> <p>16 Q To Enel Green Power. You've seen this letter</p> <p>17 before, right?</p> <p>18 A Yes.</p> <p>19 Q All right. You see you write back and you say</p> <p>20 we received your letter, and then you say "The Osage</p> <p>21 Minerals Council is not interested in meeting with</p> <p>22 representatives of Enel at this time." Do you see that?</p> <p>23 A Yes.</p> <p>24 Q Why not?</p> <p>25 A I take direction --</p>
<p>Page 159</p> <p>1 remember receiving this letter?</p> <p>2 (WHEREUPON, Exhibit 162 was marked for</p> <p>3 identification.)</p> <p>4 A Just give me one moment. I want to check</p> <p>5 something.</p> <p>6 Q Of course.</p> <p>7 A Yes.</p> <p>8 Q And you saw that Enel wrote in an attempt to</p> <p>9 begin a dialogue as a possible way to resolve differences.</p> <p>10 Do you remember that?</p> <p>11 A That stayed over in executive to who the letter</p> <p>12 was written. I take direction from my council's</p> <p>13 consensus.</p> <p>14 Q Understood. My simple question was you remember</p> <p>15 that at this time, May of 2015, Enel had sent a letter to</p> <p>16 Chief Standing Bear, to assistant Chief Raymond Redcorn</p> <p>17 and to Chairman Waller?</p> <p>18 A Yes.</p> <p>19 Q An opening, if you will, to a potential</p> <p>20 accommodation. Do you remember that?</p> <p>21 A Yes.</p> <p>22 Q What was your reaction to the letter?</p> <p>23 A That all would have went to the case that was</p> <p>24 filed.</p> <p>25 Q Meaning that you, at this time at least,</p>	<p>Page 161</p> <p>1 MR. PIPESTEM: Objection. The basis for that is</p> <p>2 subject to attorney-client privilege. Communications</p> <p>3 between attorney and the client, the Minerals Council at</p> <p>4 the time, went into litigation strategy. So I'm</p> <p>5 instructing the witness not to answer the question.</p> <p>6 MR. McCORMACK: That's a bold move, Counsel.</p> <p>7 You just took over the question and decided it was</p> <p>8 privileged, so let me --</p> <p>9 MR. PIPESTEM: This is in the middle of</p> <p>10 litigation, as you recall, Counsel. That's not that bold.</p> <p>11 That's sort of, as you described earlier, sort of a</p> <p>12 rational, easy response to this when you're asking about</p> <p>13 what they're thinking about in the middle of litigation</p> <p>14 when it mentions -- the letter mentions litigation on its</p> <p>15 face.</p> <p>16 MR. McCORMACK: When counsel appears on the</p> <p>17 scene, I will stand back to privilege, but we haven't</p> <p>18 established that yet. The question I asked Mr. Waller</p> <p>19 is -- maybe in fairness to your objection, I'll try that.</p> <p>20 Q (BY MR. McCORMACK) Which is prior to responding</p> <p>21 to this letter -- excuse me. Prior to responding to the</p> <p>22 Enel letter, did you have communications with your</p> <p>23 counsel? You can answer that question yes or no.</p> <p>24 A Yes.</p> <p>25 Q All right. And after those communications with</p>

<p>Page 162</p> <p>1 counsel this letter came, is that a fair description?</p> <p>2 A Yes.</p> <p>3 Q All right. Independent of your counsel without</p> <p>4 regard to anything your counsel may have said to you, if</p> <p>5 that's possible, did you personally decide that this was</p> <p>6 not a good time to have a conversation with the folks at</p> <p>7 Enel?</p> <p>8 MR. PIPESTEM: Objection. That is a -- the</p> <p>9 Chairman Everett Waller serves as the chairman of the</p> <p>10 Osage Minerals Council, so his thoughts and deliberations</p> <p>11 are subject to -- this is all in preparation for</p> <p>12 litigation, so I'm instructing the witness not to answer.</p> <p>13 MR. McCORMACK: I asked -- I asked him</p> <p>14 specifically whether or not he had a thought independent</p> <p>15 of his counsel and in his personal capacity, which none of</p> <p>16 those would implicate the privilege. I'm going to stand</p> <p>17 with that question.</p> <p>18 Q (BY MR. McCORMACK) Independent of your counsel</p> <p>19 and in your personal capacity, did you have a reaction to</p> <p>20 whether or not this was a good time to be speaking to</p> <p>21 Enel?</p> <p>22 MR. PIPESTEM: Objection. For the reasons I</p> <p>23 stated before, this is subject to privilege, and so I'm</p> <p>24 instructing the witness not to answer the question.</p> <p>25 Q (BY MR. McCORMACK) Did you have any thoughts</p>	<p>Page 164</p> <p>1 relevance as instructed by the Court.</p> <p>2 MR. McCORMACK: I've stumbled into a funny place</p> <p>3 with you guys.</p> <p>4 MR. PIPESTEM: I don't know -- well, I don't</p> <p>5 want to argue with you, but I suggest you read not only</p> <p>6 the court orders but your own filings here.</p> <p>7 MR. McCORMACK: I understand. I understand all</p> <p>8 that. My point is I know privilege quite well, and you're</p> <p>9 instructing to answer things that I'm not asking about</p> <p>10 privilege, and you're doing it promiscuously, but I can't</p> <p>11 stop you from doing it.</p> <p>12 MR. PIPESTEM: I respectfully disagree with you,</p> <p>13 Counsel.</p> <p>14 MR. McCORMACK: I understand. I understand. We</p> <p>15 both have jobs to do.</p> <p>16 Q (BY MR. McCORMACK) Anyway, since I can't ask</p> <p>17 you about your personal opinions that you derived from</p> <p>18 your own thinking and not your lawyer's, let me move on to</p> <p>19 something else.</p> <p>20 You say in the next sentence, "In addition, your</p> <p>21 letter was addressed to Chief Geoffrey Standing Bear and</p> <p>22 Assistant Chief Raymond Redcorn. Any future</p> <p>23 correspondence regarding proposed wind energy projects in</p> <p>24 Osage County should be directed to Osage Minerals Council</p> <p>25 only." Why did you tell them that?</p>
<p>Page 163</p> <p>1 independent of your counsel?</p> <p>2 MR. PIPESTEM: Objection for the same reasons I</p> <p>3 stated.</p> <p>4 MR. McCORMACK: How can you possibly say that</p> <p>5 that's privileged, whether he had thoughts independent of</p> <p>6 his counsel and you're saying that's privilege?</p> <p>7 MR. PIPESTEM: Chairman Waller serves as the</p> <p>8 chairman of the Osage Minerals Council.</p> <p>9 MR. McCORMACK: Who cares? I'm asking him his</p> <p>10 personal opinion without any lawyers.</p> <p>11 MR. PIPESTEM: I care. I care.</p> <p>12 MR. McCORMACK: I understand that.</p> <p>13 MR. PIPESTEM: I care.</p> <p>14 MR. McCORMACK: But I'm talking about the</p> <p>15 technical point. Of course you care. My point is how can</p> <p>16 you instruct a witness not to answer a question when I've</p> <p>17 asked him independent of the advice he was getting from</p> <p>18 counsel in his own personal opinion if he had a view?</p> <p>19 What's privileged about that?</p> <p>20 MR. PIPESTEM: It's related to litigation</p> <p>21 involving the Osage Minerals Council where he's an</p> <p>22 official, so that is a part of the deliberation they have,</p> <p>23 each one of them, and then as a body, so that is</p> <p>24 privileged. And so I'm instructing him not to answer the</p> <p>25 question. Furthermore, I'm objecting on the basis of</p>	<p>Page 165</p> <p>1 A I'm in --</p> <p>2 MR. PIPESTEM: Objection. I'm instructing the</p> <p>3 witness not to answer the question. This document was</p> <p>4 written and signed by Chairman Waller in his capacity as</p> <p>5 chairman of the Osage Minerals Council. The basis for</p> <p>6 this communication is subject to a deliberative privilege</p> <p>7 and the discussion among Minerals Council members, so I'm</p> <p>8 instructing him not to answer question.</p> <p>9 MR. McCORMACK: You know this letter was sent to</p> <p>10 my client. You understand that, right? There's no</p> <p>11 confidentiality associated with the statements in the</p> <p>12 letter. You understand that, don't you?</p> <p>13 MR. PIPESTEM: I understand exactly what the</p> <p>14 document is.</p> <p>15 MR. McCORMACK: Okay. But I've now asked him</p> <p>16 what he meant by something he said in a letter to my</p> <p>17 client, and you're saying he can't answer that question</p> <p>18 because it's privileged? Is that what your point is?</p> <p>19 MR. PIPESTEM: You're asking him to expound on a</p> <p>20 letter that was written in the context of litigation, so</p> <p>21 that is right.</p> <p>22 MR. McCORMACK: I'm asking him what he meant</p> <p>23 when he sent my client, clearly not within the privilege,</p> <p>24 a statement. I'm asking him what he meant, and you're</p> <p>25 saying he can't answer it because even though he made the</p>

<p style="text-align: right;">Page 166</p> <p>1 statement to my client what he was thinking when he made</p> <p>2 the statement was privileged; that's what you're saying?</p> <p>3 MR. PIPESTEM: Yes, that's what I'm advising,</p> <p>4 yes. That in the context of this litigation when the</p> <p>5 chairman of the Minerals Council writes a letter to a</p> <p>6 defendant party who is -- who is a party to this lawsuit</p> <p>7 and has been, with a lot of history here, this sort of</p> <p>8 letter is subject to conversations between council and</p> <p>9 their attorneys, and you cannot try to cordon off the</p> <p>10 chairman of the Minerals Council by asking his thoughts in</p> <p>11 personal capacity because but for the fact that he's a</p> <p>12 part of the Osage Minerals Council he would not be part of</p> <p>13 the conversation.</p> <p>14 MR. McCORMACK: My problem, Counsel, is not with</p> <p>15 that issue at this point because I'm asking his personal</p> <p>16 opinion. He sent a letter to my client. I'm asking what</p> <p>17 he meant and you won't let him answer the question.</p> <p>18 Clearly the letter is not privileged.</p> <p>19 MR. PIPESTEM: And clearly the letter speaks for</p> <p>20 itself.</p> <p>21 MR. McCORMACK: No, it doesn't. That's what</p> <p>22 discovery is all about. Okay, you just keep instructing</p> <p>23 away. I think you set a world record for instructions not</p> <p>24 to answer in a deposition.</p> <p>25 MR. PIPESTEM: And you're setting a world record</p>	<p style="text-align: right;">Page 168</p> <p>1 Minerals Council is responsible considering and approving</p> <p>2 mineral leases and proposing other forms of development</p> <p>3 within the minerals estate. Because wind energy projects</p> <p>4 directly implicate and affect the minerals estate, wind</p> <p>5 project-related correspondence should be directed to the</p> <p>6 Osage Minerals Council only." Do you see that?</p> <p>7 A Yes.</p> <p>8 Q All right. So you're instructing my -- you're</p> <p>9 telling my client that they should only deal with the</p> <p>10 Osage Minerals Council, not -- not the Office of the</p> <p>11 Principal Chief, correct?</p> <p>12 A We're litigants at the time, so it's a directive</p> <p>13 back to us.</p> <p>14 Q I don't know what that means. You're telling my</p> <p>15 client that they should deal with the Osage Minerals</p> <p>16 Council and not with the office of the chief, correct?</p> <p>17 That's what you were telling them?</p> <p>18 MR. PIPESTEM: Objection. Asked and answered.</p> <p>19 Q (BY MR. McCORMACK) You can answer the question.</p> <p>20 Mr. Waller, you can answer the question.</p> <p>21 A We are in a federal case with our trustee is why</p> <p>22 I needed it directed back to us.</p> <p>23 Q Well, at this time the Osage Minerals Council</p> <p>24 was not in the case, correct?</p> <p>25 MR. PIPESTEM: Objection. Calls for a legal</p>
<p style="text-align: right;">Page 167</p> <p>1 for asking questions that are inappropriate.</p> <p>2 MR. McCORMACK: Okay. Let me ask more questions</p> <p>3 that you apparently think are inappropriate about what he</p> <p>4 meant when he sent something my client, so let me keep</p> <p>5 going and I'm going to draw as many instructions as you</p> <p>6 decide are appropriate.</p> <p>7 Q (BY MR. McCORMACK) I asked you pretty simply,</p> <p>8 Mr. Waller, why you had told him that any future</p> <p>9 correspondence regarding the proposed wind energy projects</p> <p>10 in Osage County should be directed to the Osage Minerals</p> <p>11 Council only, asking why you told them that. I'm going to</p> <p>12 ask you that again, except I think I'm going to draw an</p> <p>13 objection you're not allowed to answer that question.</p> <p>14 MR. McCORMACK: Is that right, Counsel?</p> <p>15 MR. PIPESTEM: That's correct, for the reasons I</p> <p>16 stated before.</p> <p>17 MR. McCORMACK: And that reason is because you</p> <p>18 think that's privileged, correct?</p> <p>19 MR. PIPESTEM: Yes, the deliberation that went</p> <p>20 into this letter, it's privileged. Yes, it is.</p> <p>21 Q (BY MR. McCORMACK) And then, "The Osage</p> <p>22 Minerals Council is an independent agency charged with</p> <p>23 preserving the Osage Mineral Estate and protecting the</p> <p>24 income derived from the minerals estate. In administering</p> <p>25 and developing the Osage Mineral Estate, the Osage</p>	<p style="text-align: right;">Page 169</p> <p>1 conclusion. And I'm going to instruct the witness not to</p> <p>2 answer the question. Relations between the United States</p> <p>3 as trustee and the Minerals Council as the trust</p> <p>4 beneficiary of the Osage Nation when it comes to the Osage</p> <p>5 Mineral Estate are privileged. So the state of the Osage</p> <p>6 Minerals Council's place in this is --</p> <p>7 MR. McCORMACK: Just let me get it straight,</p> <p>8 Counsel. I asked him the question of whether at this time</p> <p>9 the Osage Minerals Council was a party to this lawsuit,</p> <p>10 and you've just instructed him not to answer that question</p> <p>11 on privilege?</p> <p>12 MR. PIPESTEM: That's not the question you</p> <p>13 asked, Counsel.</p> <p>14 MR. McCORMACK: Well, then, let me ask that</p> <p>15 question.</p> <p>16 Q (BY MR. McCORMACK) At this time was Osage</p> <p>17 Minerals Council a party to this lawsuit?</p> <p>18 A No.</p> <p>19 Q All right. Why did you advise Enel that they</p> <p>20 should only deal with the Osage Minerals Council relative</p> <p>21 to the subject matter on a go-forward basis?</p> <p>22 MR. PIPESTEM: Objection. I'm instructing the</p> <p>23 witness not to answer because that question gets to</p> <p>24 matters of privilege as counsel -- as attorney-client and</p> <p>25 deliberative privilege. I'm instructing him not to</p>

<p>Page 170</p> <p>1 answer.</p> <p>2 Q (BY MR. McCORMACK) Did you speak to your</p> <p>3 counsel, yes or no, on the subject matter of whether or</p> <p>4 not Enel should communicate only with the Osage Minerals</p> <p>5 Council on a go-forward basis relative to the wind farm?</p> <p>6 MR. PIPESTEM: Objection. You're asking him</p> <p>7 specifically a question about what he communicated with</p> <p>8 legal counsel, so I'm instructing him not to answer the</p> <p>9 question.</p> <p>10 MR. McCORMACK: Well, here's how privilege</p> <p>11 works, at least in my world. You have the person who</p> <p>12 communicated, the lawyer who was involved, and the general</p> <p>13 subject matter of the communication, which is maintained</p> <p>14 in confidence, and that makes it privileged so long as it</p> <p>15 was of a legal nature. I asked him whether or not he had</p> <p>16 spoken on the general subject matter of whether or not the</p> <p>17 Osage Minerals Council should be the only party</p> <p>18 communicating with Enel on a go-forward basis at this</p> <p>19 time. That's what I asked.</p> <p>20 MR. PIPESTEM: And that same question I would</p> <p>21 instruct him not to answer because that would violate the</p> <p>22 attorney-client privilege.</p> <p>23 MR. McCORMACK: So although Mr. Waller informed</p> <p>24 my client to communicate only with the Osage Minerals</p> <p>25 Council, you're not going to let him answer the question</p>	<p>Page 172</p> <p>1 headaches if I had said that early on. So this letter, as</p> <p>2 your recollection, was drafted by your legal counsel; is</p> <p>3 that fair?</p> <p>4 A After meeting with the council.</p> <p>5 Q Okay. At the meeting of the council, was your</p> <p>6 counsel present at that meeting, or was that meeting of</p> <p>7 the council without your counsel present?</p> <p>8 A With them present.</p> <p>9 Q Okay. Let's go to the third paragraph. It</p> <p>10 says, "Finally, we have recently learned that the</p> <p>11 representatives of Osage Wind met with the assistant</p> <p>12 secretary of Indian Affairs, Chairman Washburn, and sought</p> <p>13 to discuss the pending federal court litigation and the</p> <p>14 potential for settlement. It was highly inappropriate for</p> <p>15 Osage Wind, LLC/Enel to request and attend such a meeting</p> <p>16 given the pending federal litigation and even more so</p> <p>17 given that Osage Minerals Council was not provided with</p> <p>18 notice of the meeting or invited to attend." Do you see</p> <p>19 that?</p> <p>20 A Yes.</p> <p>21 Q Do you know whether the Osage Minerals Council</p> <p>22 ever met with the assistant secretary of Indian Affairs or</p> <p>23 anyone else from the Indian Affairs Office in DC with</p> <p>24 regard to the subject matter of the dispute with Osage</p> <p>25 Wind without Osage Wind present?</p>
<p>Page 171</p> <p>1 why did he tell that to my client, right?</p> <p>2 MR. PIPESTEM: You've asked several questions.</p> <p>3 You have asked the question of what he communicated with</p> <p>4 legal counsel, which certainly is privileged, and then</p> <p>5 also the deliberation with legal counsel because as</p> <p>6 Chairman Waller testified that this -- the Minerals</p> <p>7 Council was represented by legal counsel at the time. And</p> <p>8 so yes, I'm instructing him not to answer the question</p> <p>9 you're asking.</p> <p>10 Q (BY MR. McCORMACK) Mr. Waller, who wrote this</p> <p>11 letter?</p> <p>12 A The Osage Minerals Council.</p> <p>13 Q Okay. Did that involve you? Did you</p> <p>14 participate in drafting the letter?</p> <p>15 A I read it, approve it, and then sign it.</p> <p>16 Q All right. Do you know who on the Osage</p> <p>17 Minerals Council drafted the letter?</p> <p>18 A Yes.</p> <p>19 Q Who?</p> <p>20 A My attorneys.</p> <p>21 Q Okay, fair enough. But they're not on the Osage</p> <p>22 Minerals Council, are they?</p> <p>23 A No, they were under litigation and hired by us</p> <p>24 to assist us in going through this endeavor.</p> <p>25 Q All right. Perhaps that would've saved a lot of</p>	<p>Page 173</p> <p>1 A Like in this meeting where we weren't present, I</p> <p>2 have not.</p> <p>3 Q Do you know whether or not the Osage -- whether</p> <p>4 or not members of the Osage Minerals Council met with</p> <p>5 anybody at the Secretary of Indian Affairs Office about</p> <p>6 this subject matter when Enel was not present at any time?</p> <p>7 A I have not.</p> <p>8 Q At the end of letter you say, "In closing if in</p> <p>9 the future the Osage Minerals Council would like to</p> <p>10 discuss wind project related issues, we will contact you</p> <p>11 directly." Do you see that?</p> <p>12 A Yes.</p> <p>13 Q Have you ever contacted Enel in the time frame</p> <p>14 from May 26, 2015 until today on wind project related</p> <p>15 issues?</p> <p>16 A No.</p> <p>17 Q Why not?</p> <p>18 A I think the initiative has lost its value</p> <p>19 because we're in litigation.</p> <p>20 Q Okay. So litigation changed the dynamics some?</p> <p>21 A Didn't it for you?</p> <p>22 Q Yes, I suppose that's fair.</p> <p>23 Let's go to the next exhibit, which is under tab</p> <p>24 33, to my concierge.</p> <p>25 MR. McCORMACK: I believe this is 163, Mr. Court</p>

<p>Page 174</p> <p>1 Reporter?</p> <p>2 THE COURT REPORTER: This will be 164.</p> <p>3 MR. McCORMACK: Sorry, 164.</p> <p>4 Q (BY MR. McCORMACK) These are minutes from an</p> <p>5 Osage Minerals Council meeting of November 13, 2005.</p> <p>6 (WHEREUPON, Exhibit 164 was marked for</p> <p>7 identification.)</p> <p>8 A You're a day early.</p> <p>9 Q Actually, let me mark as 165 a set of minutes</p> <p>10 dated August 19, 2015 of the Osage Minerals Council, and</p> <p>11 that will be 165. So 164 is the November 13, 2015</p> <p>12 meeting, and 165 is the August 19, 2015 meeting.</p> <p>13 THE VIDEOGRAPHER: What tab is that?</p> <p>14 MR. McCORMACK: I'm sorry, my apologies. Tab</p> <p>15 30, Osage Minerals Council regular meeting August 19,</p> <p>16 2015. My apologies for doing those slightly out of order,</p> <p>17 but let's turn to 165 first, if you don't mind. Mr.</p> <p>18 Concierge, if you would put 165 up on the screen.</p> <p>19 THE VIDEOGRAPHER: Which one was that? I</p> <p>20 apologize.</p> <p>21 MR. McCORMACK: Not at all. That's the one</p> <p>22 behind tab 30, and it's dated Wednesday August 19, 2015.</p> <p>23 THE VIDEOGRAPHER: Okay, I see Tab 31 as being</p> <p>24 September 16.</p> <p>25 MR. McCORMACK: Tab 30. Tab 30 is August 19.</p>	<p>Page 176</p> <p>1 Q Are any of those lawyers?</p> <p>2 A Yes.</p> <p>3 Q Okay, who are the lawyers there?</p> <p>4 A Practicing or not practicing?</p> <p>5 Q Practicing at that time, 2015.</p> <p>6 A Sicking, Dowd, I don't think that Dennison was</p> <p>7 practicing at the time, Mr. Kane. That's the best I can</p> <p>8 give you.</p> <p>9 Q Were any of those lawyers representing the Osage</p> <p>10 Minerals Council in the lawsuit against my client?</p> <p>11 A No, they were not.</p> <p>12 Q All right. I noticed also at this meeting, if</p> <p>13 you go to the next page, Chief Standing Bear came to this</p> <p>14 meeting. As you said, that's not an uncommon event. Is</p> <p>15 that fair?</p> <p>16 A Thank you.</p> <p>17 MR. PIPESTEM: Objection. It mischaracterizes</p> <p>18 his testimony from earlier in his deposition.</p> <p>19 Q (BY MR. McCORMACK) Okay, you can answer the</p> <p>20 question.</p> <p>21 A Yes, he was there.</p> <p>22 Q Let me ask you to go to the top of page five of</p> <p>23 the meeting.</p> <p>24 MR. McCORMACK: For the concierge, just blow up</p> <p>25 that top paragraph.</p>
<p>Page 175</p> <p>1 THE VIDEOGRAPHER: Okay.</p> <p>2 MR. McCORMACK: You got it?</p> <p>3 THE VIDEOGRAPHER: Yes.</p> <p>4 Q (BY MR. McCORMACK) All right, so let me proceed</p> <p>5 with what has been marked as Exhibit 165, which as I said</p> <p>6 for the record is minutes from August 19, 2015. You'll</p> <p>7 see that at this time you know that you're the chairman</p> <p>8 and you called the meeting to order at 10:04 a.m. Do you</p> <p>9 see that?</p> <p>10 (WHEREUPON, Exhibit 165 was marked for</p> <p>11 identification.)</p> <p>12 A Yes.</p> <p>13 Q At this time the Osage Minerals Council members</p> <p>14 were Cynthia Boone, Joseph Cheshewalla. Did I get it</p> <p>15 right?</p> <p>16 A You're close. You didn't get it right.</p> <p>17 Q Okay, how do you say it?</p> <p>18 A Cheshewalla.</p> <p>19 Q Cheshewalla, thank you. Joseph Cheshewalla,</p> <p>20 Galen Crum, Stephanie Irwin, Talee Redcorn, yourself, and</p> <p>21 Andrew Yates. Is that fair?</p> <p>22 A Yes.</p> <p>23 Q And then the guests in attendance, do you see</p> <p>24 that list there?</p> <p>25 A Yes.</p>	<p>Page 177</p> <p>1 THE WITNESS: Thank you. I can't read it.</p> <p>2 MR. McCORMACK: Me neither.</p> <p>3 Q (BY MR. McCORMACK) Okay. The heading here is</p> <p>4 "wind farms." Do you see that?</p> <p>5 A Yes.</p> <p>6 Q And then it says "Joseph Cheshewalla reads a</p> <p>7 letter he wrote concerning the wind turbines." Do you see</p> <p>8 that?</p> <p>9 A Yes.</p> <p>10 Q Do you recall what Mr. Cheshewalla, who was on</p> <p>11 the Osage Minerals Council at the time, what he said in</p> <p>12 his letter?</p> <p>13 A Yes.</p> <p>14 Q It goes on to say in the next sentence, "The</p> <p>15 letter concerns some options that we could have in case</p> <p>16 the wind farms are here to stay." Do you see that?</p> <p>17 A I remember it.</p> <p>18 Q Where would I get my hands on a copy of that</p> <p>19 letter?</p> <p>20 A Joe Cheshewalla.</p> <p>21 Q All right. Is that not something that the Osage</p> <p>22 Minerals Council would keep in its formal minutes or</p> <p>23 records?</p> <p>24 A He brought it to us in executive.</p> <p>25 Q Okay. Now to my question, would there be a copy</p>

<p>Page 178</p> <p>1 of that somewhere in the formal records or files of the</p> <p>2 Osage Minerals Council, that is, Mr. Cheshewalla's letter</p> <p>3 at this time?</p> <p>4 A I would have to check.</p> <p>5 Q Okay.</p> <p>6 MR. McCORMACK: Counsel, I would make a request</p> <p>7 for that letter in the event that it does appear somewhere</p> <p>8 in the OMC's council, of council's files.</p> <p>9 Q (BY MR. McCORMACK) You say you remember the</p> <p>10 letter. What do you recall that Mr. Cheshewalla was</p> <p>11 saying with regard to options in the event that wind farms</p> <p>12 were here to stay?</p> <p>13 A He really didn't have any.</p> <p>14 Q So is this -- the minutes are wrong about the</p> <p>15 options that --</p> <p>16 A No, he didn't have any specifics. He just said</p> <p>17 that we need to see what they are.</p> <p>18 Q Did people ask him questions with regard to his</p> <p>19 letter?</p> <p>20 A No.</p> <p>21 Q How well do you know Mr. Cheshewalla?</p> <p>22 A I served with him and worked with him. I know</p> <p>23 him.</p> <p>24 Q When did he leave the Osage Minerals Council?</p> <p>25 A If that was '15, in '18.</p>	<p>Page 180</p> <p>1 Q How long was his letter?</p> <p>2 A One page.</p> <p>3 Q And do you recall generally what the thrust of</p> <p>4 his conversations were or his letter was?</p> <p>5 A Just as it said here.</p> <p>6 Q Did he speak about the dispute with Enel?</p> <p>7 A I can't remember.</p> <p>8 Q How old man is Mr. Cheshewalla?</p> <p>9 A He's younger than me.</p> <p>10 Q Is he in his 50s? His 40s?</p> <p>11 A Later 50s.</p> <p>12 Q Later 50s. In any event, you testified</p> <p>13 everything you can remember about what it is that</p> <p>14 Mr. Cheshewalla may have said in his letter?</p> <p>15 A Yes, sir.</p> <p>16 Q Also in anything he may have said at this</p> <p>17 meeting in 2015?</p> <p>18 A Yes, sir.</p> <p>19 Q And then it goes on to say, "Councilman Redcorn</p> <p>20 states that we are in the energy business. He is not</p> <p>21 saying he is for wind energy, but we should keep the</p> <p>22 options open if there is energy development out there and</p> <p>23 we should be on the lookout for the benefit of the</p> <p>24 shareholders." Do you see that?</p> <p>25 A Yes.</p>
<p>Page 179</p> <p>1 Q In 2018?</p> <p>2 A Yes.</p> <p>3 Q Did he run for reelection or no?</p> <p>4 A Yes.</p> <p>5 Q Okay. And he didn't win, I take it?</p> <p>6 A Correct.</p> <p>7 Q All right. And what do you recall</p> <p>8 Mr. Cheshewalla saying to you either at this Osage</p> <p>9 Minerals Council meeting or at any other time with regard</p> <p>10 to the prospect of potentially addressing the consequence</p> <p>11 of wind farms being here to stay?</p> <p>12 MR. PIPESTEM: Objection. Those communications</p> <p>13 were part of deliberation between Minerals Council and</p> <p>14 legal counsel in the midst of litigation in federal court.</p> <p>15 I'm instructing the witness not to answer.</p> <p>16 MR. McCORMACK: He just said -- we've just</p> <p>17 testified and established that at this meeting there were</p> <p>18 no lawyers that were representing Osage Minerals Council</p> <p>19 in this litigation present.</p> <p>20 A No, that's not the question you asked.</p> <p>21 Q (BY MR. McCORMACK) What did Mr. Cheshewalla say</p> <p>22 at this meeting with regard to any aspect of wind power?</p> <p>23 A Just exactly what the minutes say he said.</p> <p>24 Q And how long did he speak?</p> <p>25 A Very short.</p>	<p>Page 181</p> <p>1 Q Do you read that and do you recall that to be a</p> <p>2 follow-up to issues that Mr. Cheshewalla was raising?</p> <p>3 A Yes, I believe it complemented it.</p> <p>4 Q All right. Do you recall whether or not</p> <p>5 Mr. Redcorn made any particular suggestions or had any</p> <p>6 particular ideas about how to keep options open in the</p> <p>7 renewables space on a go-forward basis?</p> <p>8 A No specifics.</p> <p>9 Q Okay. At any time after this, do you recall</p> <p>10 having a conversation with Mr. Cheshewalla or Mr. Redcorn</p> <p>11 on the issue of whether or not the Osage Minerals Council</p> <p>12 should consider options for renewable energy on a</p> <p>13 go-forward basis?</p> <p>14 MR. PIPESTEM: Objection. That question calls</p> <p>15 for discussions that happened in the context of</p> <p>16 litigation, including the attorney-client privilege. I'm</p> <p>17 instructing the witness not to answer the question.</p> <p>18 Q (BY MR. McCORMACK) I'm not talking about</p> <p>19 anything having to do with the Enel case. I'm talking</p> <p>20 specifically about whether at any point in time,</p> <p>21 Mr. Waller, you recall having a conversation with</p> <p>22 Mr. Cheshewalla or Mr. Redcorn with regard to the</p> <p>23 generalized topic of whether or not renewable energy</p> <p>24 should be something that the Osage Minerals Council should</p> <p>25 look into as a prospect for future consideration or</p>

<p style="text-align: right;">Page 182</p> <p>1 development?</p> <p>2 MR. PIPESTEM: Objection. I'm instructing the</p> <p>3 witness not to answer that question. It calls for issues</p> <p>4 associated directly with this litigation, so that's</p> <p>5 covered by attorney-client privilege and deliberation of</p> <p>6 an elected body called the Osage Minerals Council.</p> <p>7 MR. McCORMACK: Let me get your most recent</p> <p>8 instruction understood. If Mr. Cheshewalla and Mr. Waller</p> <p>9 had a conversation generally about the prospect of wind</p> <p>10 development or renewable development in Osage County for</p> <p>11 the future, your view, even though lawyers weren't present</p> <p>12 for the conversation, is it would be privileged because of</p> <p>13 litigation between Enel and Osage Minerals Council; is</p> <p>14 that right?</p> <p>15 MR. PIPESTEM: No, that's not my position.</p> <p>16 MR. McCORMACK: Okay. That's the question I</p> <p>17 asked, so why are you instructing him not to answer?</p> <p>18 MR. PIPESTEM: You asked a question. I'm</p> <p>19 telling you I object for different reasons.</p> <p>20 MR. McCORMACK: No, you instructed him not to</p> <p>21 answer my question.</p> <p>22 MR. PIPESTEM: That's correct, that's correct.</p> <p>23 MR. McCORMACK: If you had -- if you had an</p> <p>24 objection about whether or not I strayed into privilege,</p> <p>25 you could've inquired into that, but instead you</p>	<p style="text-align: right;">Page 184</p> <p>1 companies.</p> <p>2 Q (BY MR. McCORMACK) Mr. Waller, you're up.</p> <p>3 A In executive.</p> <p>4 Q Okay. So you had conversations about the</p> <p>5 prospect of renewable energy in Osage County in executive</p> <p>6 session; is that right?</p> <p>7 A I said that when I started talking.</p> <p>8 Q What was the nature of those conversations?</p> <p>9 MR. PIPESTEM: Objection. That is a -- I'm</p> <p>10 instructing the witness not to answer about the</p> <p>11 deliberations with legal counsel.</p> <p>12 MR. McCORMACK: Fair point.</p> <p>13 Q (BY MR. McCORMACK) In the conversations that</p> <p>14 you -- well.</p> <p>15 MR. McCORMACK: You have a very broad net,</p> <p>16 Counsel.</p> <p>17 MR. PIPESTEM: Counsel, you continue to ask</p> <p>18 questions that are clearly within the privilege. I mean,</p> <p>19 some of these aren't hard. I understand we may disagree</p> <p>20 on the margins here, but this is right at the heart of</p> <p>21 their communications.</p> <p>22 MR. McCORMACK: I asked only about</p> <p>23 communications with people other than Enel, and the answer</p> <p>24 was yes, that there were communications with others other</p> <p>25 than Enel in executive session. Then I asked what was the</p>
<p style="text-align: right;">Page 183</p> <p>1 instructed him not to answer my question, and I want to</p> <p>2 know on what basis did you do that?</p> <p>3 MR. PIPESTEM: On the basis of attorney-client</p> <p>4 privilege. If you want me to explain.</p> <p>5 MR. McCORMACK: No, I don't, because your theory</p> <p>6 is if you talk about wind power it's privileged, which is</p> <p>7 beyond my comprehension. But let me ask a different</p> <p>8 question, and let's see if I draw another one of these</p> <p>9 objections and instructions not to answer on things that I</p> <p>10 don't think are even remotely privileged, but let's see.</p> <p>11 Q (BY MR. McCORMACK) Did you have a conversation</p> <p>12 at any time with Mr. Cheshewalla or Mr. Redcorn in this</p> <p>13 timeframe, 2015 or anytime thereafter, on the general</p> <p>14 subject matter of whether or not it made sense for the</p> <p>15 Osage Minerals Council to look into the prospect of</p> <p>16 renewable energy taking place somewhere on the Osage</p> <p>17 Mineral Estate?</p> <p>18 A For any company, not just yours?</p> <p>19 Q Yes, sir, especially not mine.</p> <p>20 A Well, I don't know. You're the one we were</p> <p>21 having to deal with thinking.</p> <p>22 Q Understand, but the answer is yes, any company.</p> <p>23 MR. PIPESTEM: I'm instructing the witness not</p> <p>24 the answer to the extent that any answer involves</p> <p>25 communications related to Enel or any affiliated</p>	<p style="text-align: right;">Page 185</p> <p>1 nature of those communications.</p> <p>2 THE WITNESS: You asked specifically about</p> <p>3 Councilman Redcorn and Councilman Cheshewalla.</p> <p>4 MR. McCORMACK: Yes, I did.</p> <p>5 MR. PIPESTEM: Let me answer the question</p> <p>6 related to these.</p> <p>7 MR. McCORMACK: Mr. Waller, you may be late for</p> <p>8 your events if we continue to have these kinds of problems</p> <p>9 all through the afternoon.</p> <p>10 MR. PIPESTEM: You're going to run out of time</p> <p>11 anyway. He's going to be on time. You're asking about</p> <p>12 communications that occurred in executive session, which</p> <p>13 are by definition privileged.</p> <p>14 MR. McCORMACK: Executive session and executive</p> <p>15 privilege does not apply to commercial events and</p> <p>16 commercial matters. It doesn't. I've litigated it many</p> <p>17 times.</p> <p>18 THE WITNESS: On a reservation?</p> <p>19 MR. McCORMACK: If it's a commercial matter,</p> <p>20 executive privilege doesn't -- it can't be used.</p> <p>21 MR. PIPESTEM: In the middle of litigation</p> <p>22 regarding wind energy companies, conversations in</p> <p>23 executive session often in this circumstance are going to</p> <p>24 involve legal counsel or deliberation about litigation.</p> <p>25 MR. McCORMACK: We needn't lecture each other.</p>

<p>Page 186</p> <p>1 MR. PIPESTEM: I agree.</p> <p>2 MR. McCORMACK: Let me ask this question.</p> <p>3 Q (BY MR. McCORMACK) You said -- I asked you</p> <p>4 about Mr. Cheshewalla and I asked you about Mr. Redcorn,</p> <p>5 and there are obvious statements about wind power in this</p> <p>6 2015 Osage Minerals Council meeting, yes? I've asked you</p> <p>7 about that. Fair enough so far?</p> <p>8 A The answer is yes.</p> <p>9 Q You've told me what you could about those</p> <p>10 discussions, which is what you've already testified to.</p> <p>11 And then I asked if you ever had any further conversation</p> <p>12 not involving Enel about the development about renewable</p> <p>13 power, generally, in the Osage Mineral Estate. And you</p> <p>14 said yes, you had that conversation at executive council.</p> <p>15 Am I right so far?</p> <p>16 A With my councilmen. I didn't talk to a company.</p> <p>17 Q Okay, with your councilmen. In the</p> <p>18 conversations that you had with Mr. Cheshewalla and</p> <p>19 Mr. Redcorn, did those take place after this meeting of</p> <p>20 2015 or at any other time beyond this 2015 meeting?</p> <p>21 A Executive session.</p> <p>22 Q Okay. So the answer to that question, I guess,</p> <p>23 is yes, that it did occur but it occurred in executive</p> <p>24 session; is that right?</p> <p>25 A Yes.</p>	<p>Page 188</p> <p>1 communications with mister -- well, who was present, which</p> <p>2 counsel?</p> <p>3 A It's in executive session of the council</p> <p>4 meeting.</p> <p>5 Q Which counsel was present? Which lawyers were</p> <p>6 present for that meeting that you just referred to?</p> <p>7 A That would have been a representative from</p> <p>8 Fredericks Spiegel (phonetic) and Morgan.</p> <p>9 Q Okay. That was your lawyers at the time for the</p> <p>10 case, for the litigation?</p> <p>11 A Tom Fredericks was our representative.</p> <p>12 Q So the only time you ever talked about renewable</p> <p>13 power in Osage County with Mr. Cheshewalla or Mr. Redcorn</p> <p>14 was in executive session when there was litigation counsel</p> <p>15 present on the Enel case; is that right?</p> <p>16 MR. PIPESTEM: Objection. Asked and answered.</p> <p>17 Q (BY MR. McCORMACK) You can answer. Waiting on</p> <p>18 you, Mr. Waller.</p> <p>19 A Executive session, because of the litigation I</p> <p>20 have not been able to take care of all the items I would</p> <p>21 like to do. This is taking a huge amount of my time</p> <p>22 trying to take care of my shareholders. I handle all of</p> <p>23 my business with my council. In cases like this,</p> <p>24 litigation, it's all held in executive. That's my answer.</p> <p>25 Q I understand. And again maybe Counsel will</p>
<p>Page 187</p> <p>1 Q What was the context of those discussions? Did</p> <p>2 it involve litigation with my client Enel?</p> <p>3 MR. PIPESTEM: Objection. You're asking him to</p> <p>4 make statements about conversations that he just said were</p> <p>5 privileged and as a part of an executive session of the</p> <p>6 Osage Minerals Council.</p> <p>7 MR. McCORMACK: Okay, you're saying that if they</p> <p>8 had a conversation about the future of renewable power in</p> <p>9 Osage County in an executive session you're going to</p> <p>10 instruct him not to answer whether it involved litigation</p> <p>11 or not, correct?</p> <p>12 MR. PIPESTEM: In this circumstance that</p> <p>13 involves litigation, the future of wind energy, yes, is</p> <p>14 related to this lawsuit.</p> <p>15 MR. McCORMACK: I don't know if you were at that</p> <p>16 meeting or not, but it's really not for you to say whether</p> <p>17 they involved it. This is really for this witness to say,</p> <p>18 so let's ask that question.</p> <p>19 Q (BY MR. McCORMACK) In this executive session in</p> <p>20 which you had conversations with either Mr. Cheshewalla or</p> <p>21 Mr. Redcorn about the future of potential renewable energy</p> <p>22 in Osage County, was litigation counsel present for those</p> <p>23 meetings?</p> <p>24 A Yes.</p> <p>25 Q Okay. Did the subject matter of those</p>	<p>Page 189</p> <p>1 instruct if need be, but you've never had a conversation</p> <p>2 with Mr. Cheshewalla or with mister -- excuse me.</p> <p>3 MR. McCORMACK: Put my document back up,</p> <p>4 Mr. Concierge.</p> <p>5 Q (BY MR. McCORMACK) You've never had a</p> <p>6 conversation with Mr. Cheshewalla or Mr. Redcorn on the</p> <p>7 issue of the renewable prospects for Osage County and</p> <p>8 Osage Mineral Estate other than in executive session and</p> <p>9 other than when your counsel was present for this case; is</p> <p>10 that right?</p> <p>11 A That's correct. I had to be in front of my full</p> <p>12 Council or whoever is present for the quorum.</p> <p>13 Q Okay. Do you know if anybody in the audience or</p> <p>14 anyone else commented in this 2015 meeting on the</p> <p>15 statements that were made by Mr. Cheshewalla and</p> <p>16 Mr. Redcorn with regard to the options for renewable power</p> <p>17 in the future in Osage County?</p> <p>18 A The minutes reflect they did.</p> <p>19 Q And that would be Mr. Connor. Anyone else?</p> <p>20 A The minutes reflect what happened.</p> <p>21 Q All right. "Councilman Yates states that he is</p> <p>22 firmly against the wind industry and he is against any</p> <p>23 kind of negotiating with them." Do you see that?</p> <p>24 A Yes, I did.</p> <p>25 Q And that was a position he consistently held?</p>

<p>Page 190</p> <p>1 MR. PIPESTEM: Objection. Calls for</p> <p>2 communications that were part of this litigation, and so</p> <p>3 I'm instructing the witness not to answer the question.</p> <p>4 MR. McCORMACK: You're instructing the witness</p> <p>5 not to answer the question of whether Councilman Yates</p> <p>6 consistently took the position that he was firmly against</p> <p>7 the wind industry and against any kind of negotiating with</p> <p>8 the wind industry?</p> <p>9 MR. PIPESTEM: That's not the question that you</p> <p>10 asked.</p> <p>11 MR. McCORMACK: I thought it was.</p> <p>12 Q (BY MR. McCORMACK) In any event, this position</p> <p>13 that Mr. Yates took at this meeting that he is firmly</p> <p>14 against the wind industry and is against any kind of</p> <p>15 negotiating with them, was that a position that was his</p> <p>16 consistent position, from your observations and</p> <p>17 understandings, in connection with your dealings with the</p> <p>18 Osage Minerals Council?</p> <p>19 MR. PIPESTEM: Objection. I'm instructing the</p> <p>20 witness not to answer the question. Communications</p> <p>21 between Councilman Yates and Councilman now Chairman</p> <p>22 Waller involving litigation and any kind of negotiations</p> <p>23 with other parties, particularly Enel, was a part of an</p> <p>24 attorney-client communication and deliberation among the</p> <p>25 Tribal Council -- pardon me, the Minerals Council, so</p>	<p>Page 192</p> <p>1 A I have not.</p> <p>2 Q Okay. Let's look at tab 33, which has been</p> <p>3 marked as Exhibit 164. This is a November 13, 2015 set of</p> <p>4 minutes. I wanted to ask you, do you recall this meeting,</p> <p>5 Mr. Waller? You were the chairman at this time</p> <p>6 November 13, 2015?</p> <p>7 A Yes.</p> <p>8 Q If you go to the second page --</p> <p>9 MR. McCORMACK: Concierge, go to the second</p> <p>10 page. It's the first full paragraph, the section windmill</p> <p>11 cases. Do you see that.</p> <p>12 Q (BY MR. PIPESTEM) Okay. And it says,</p> <p>13 "Stephanie Irwin states the Osage Wind, we lost that</p> <p>14 part." Do you know what she was referring to when she</p> <p>15 says that?</p> <p>16 A I do not.</p> <p>17 Q All right. And it says, "When Mustang Run</p> <p>18 started we asked for an injunction until the Osage Wind</p> <p>19 part was settled." Do you know what she -- what that</p> <p>20 sentence refers to?</p> <p>21 A It's a directive by a councilwoman.</p> <p>22 Q I'm sorry, I didn't hear that.</p> <p>23 A It's a directive that is by Councilwoman Irwin.</p> <p>24 Q Well, let's talk about that.</p> <p>25 (Whereupon a discussion was held that was not</p>
<p>Page 191</p> <p>1 therefore it is privileged and is not -- the witness, I'm</p> <p>2 instructing him not to respond.</p> <p>3 Q (BY MR. McCORMACK) "Councilman Yates stated at</p> <p>4 this meeting he was firmly against the wind industry." Is</p> <p>5 that a position that he took with you in other</p> <p>6 circumstances not involving your counsel? What a joke.</p> <p>7 MR. PIPESTEM: Objection. I'm instructing the</p> <p>8 witness not to answer the question for the basis of</p> <p>9 violating attorney-client privilege. I'd like to make</p> <p>10 sure that the record says or states that counsel for</p> <p>11 defendants referred to our objection as a joke. I want to</p> <p>12 make sure that that's on the record.</p> <p>13 MR. McCORMACK: Well, my view is that you've</p> <p>14 instructed him not to answer an immense number of</p> <p>15 questions that don't implicate the privilege.</p> <p>16 MR. PIPESTEM: I disagree with you.</p> <p>17 MR. McCORMACK: Okay, let's not fight. You can</p> <p>18 see I feel that you have overused your instruction, but I</p> <p>19 can't stop you from doing it. You have your own client to</p> <p>20 take care of. I've got that.</p> <p>21 Q (BY MR. McCORMACK) So let me ask this question.</p> <p>22 Did you ever speak with Councilman Yates about his</p> <p>23 position that he is firmly against the wind industry at</p> <p>24 any time other than when you heard him say this in front</p> <p>25 of this meeting in 2015 where lawyers were not present?</p>	<p>Page 193</p> <p>1 reported due to interference)</p> <p>2 Q (BY MR. McCORMACK) Do you recognize the name</p> <p>3 Mustang Run?</p> <p>4 A Yes.</p> <p>5 Q You understand Mustang Run to be another wind</p> <p>6 farm that was attempting to build out in Osage County?</p> <p>7 A Yes.</p> <p>8 Q Do you recall whether the Osage Minerals Council</p> <p>9 took a position relative to whether or not the Mustang Run</p> <p>10 wind farm should proceed in Osage County?</p> <p>11 A Yes.</p> <p>12 Q The position Osage Minerals Council took was</p> <p>13 that the Mustang Run wind farm should not proceed; is that</p> <p>14 fair?</p> <p>15 A Repeat that.</p> <p>16 Q Yes. The position that the Osage Minerals</p> <p>17 Council took was that the Mustang Run wind farm should not</p> <p>18 proceed in Osage County, correct?</p> <p>19 A At that time.</p> <p>20 Q All right. Has that changed since then?</p> <p>21 A You and I aren't done yet.</p> <p>22 Q Understood. But in terms of Mustang Run, has</p> <p>23 the Osage Minerals Council's position that Mustang Run</p> <p>24 should not be able to build a wind farm in Osage County,</p> <p>25 has that position changed?</p>

<p>Page 194</p> <p>1 A I can't answer that until I get done with this</p> <p>2 case.</p> <p>3 Q Okay, and maybe I can understand this better.</p> <p>4 Is your view that this case will help set policy on an</p> <p>5 ongoing basis for the Osage Minerals Council which then it</p> <p>6 would use to deal with potential additional wind or</p> <p>7 renewable farm projects in Osage County?</p> <p>8 A That is one of my options.</p> <p>9 Q Okay. What about this case do you think needs</p> <p>10 to be resolved before you can seriously consider other</p> <p>11 wind farms or renewable energy projects in Osage County?</p> <p>12 A The reflection of our sovereignty and the</p> <p>13 commitment to be in concert with us on projects that</p> <p>14 develop the future for this reservation.</p> <p>15 Q I understand. You're hoping that perhaps this</p> <p>16 case will create a template for that future?</p> <p>17 A I can dream, can't I?</p> <p>18 Q Yes, and can't we all? But that was -- that's</p> <p>19 my question. Do you think that perhaps a resolution of</p> <p>20 this dispute, however it may turn out, will have a major</p> <p>21 impact on how the Osage Minerals Council views renewable</p> <p>22 projects, including wind projects, in the future for Osage</p> <p>23 County?</p> <p>24 A Not just wind, but other projects in general,</p> <p>25 green energy.</p>	<p>Page 196</p> <p>1 spent over \$1 million on the wind farm that is our</p> <p>2 responsibility because of our inherent sovereignty." Do</p> <p>3 you see that?</p> <p>4 A Yes.</p> <p>5 Q Do you recall this discussion and what may have</p> <p>6 been said in the open meeting with the public about the</p> <p>7 importance of spending the money because of the inherent</p> <p>8 sovereignty?</p> <p>9 A The sovereign is the issue.</p> <p>10 Q At this time it goes on to say, "This is what</p> <p>11 she's asking today, for a resolution to direct</p> <p>12 Mr. Fredericks to ask the solicitor's office to move</p> <p>13 forward on the appeal." Do you see that?</p> <p>14 A Yes.</p> <p>15 Q This is the appeal of this case, the one</p> <p>16 involving the determination by the lower court that there</p> <p>17 had not been a use of the mineral estate?</p> <p>18 A Are you representing Osage Wind?</p> <p>19 Q Yes, in this case, yes.</p> <p>20 A Then the answer is yes.</p> <p>21 Q All right.</p> <p>22 MR. McCORMACK: Can the concierge go to the next</p> <p>23 part of this document under what it says there? It says,</p> <p>24 I think, motion to enter executive was made by Councilman</p> <p>25 Yates and by Councilman Irwin.</p>
<p>Page 195</p> <p>1 Q All right.</p> <p>2 A But you are the first element that we have to</p> <p>3 deal with.</p> <p>4 Q Have there been other green projects that have</p> <p>5 approached the Osage Minerals Council in the last several</p> <p>6 years with the desire to perhaps develop a green project</p> <p>7 in Osage County that are on hold, if you will, until</p> <p>8 resolution of the disputes between the Osage Minerals</p> <p>9 Council and the Osage Nation -- excuse me, and Enel?</p> <p>10 A I cannot entertain other projects until you and</p> <p>11 I take care of this one.</p> <p>12 Q Okay, I got it. That's an incentive for both of</p> <p>13 us it seems like?</p> <p>14 A It is to me.</p> <p>15 Q I understand, I understand. I mean, it's an</p> <p>16 important issue, renewable power. You know, I asked a lot</p> <p>17 of questions earlier today about whether renewable power</p> <p>18 was going to be in the future of the Osage Mineral Estate,</p> <p>19 and I think what you're telling me is maybe, but we've got</p> <p>20 to get this problem resolved first. Is that a fair</p> <p>21 summary of all that?</p> <p>22 A I concur.</p> <p>23 Q All right, okay. It goes on in this section.</p> <p>24 It says, "She would like a resolution today because the</p> <p>25 solicitors will have to appeal it. She states we have</p>	<p>Page 197</p> <p>1 A Yes.</p> <p>2 Q (BY MR. McCORMACK) And then if you look at</p> <p>3 the -- it goes into executive session, and then if you</p> <p>4 look at the very bottom on the page --</p> <p>5 MR. McCORMACK: And let's ask our concierge to</p> <p>6 do that. It just says the last two motion passes down</p> <p>7 there. Do you see those two at the bottom, motion passes</p> <p>8 and motion passes? Put them both up. Okay.</p> <p>9 Q (BY MR. McCORMACK) And it says, Motion is made</p> <p>10 by Councilwoman Irwin to accept and ask Mr. Fredericks to</p> <p>11 send his letter to the US Solicitor's Office to do the</p> <p>12 appeal process and ask him to do the appeal on the</p> <p>13 windmill and is seconded by Councilwoman Boone. Do you</p> <p>14 see that?</p> <p>15 A Yes.</p> <p>16 Q Do you know at this time whether or not anyone</p> <p>17 from the Osage Minerals Council had been in contact with</p> <p>18 the Department of Interior on this issue as to whether or</p> <p>19 not to appeal?</p> <p>20 A No.</p> <p>21 Q Do you know whether anyone from the Osage</p> <p>22 Minerals Council had been in touch with anyone at the</p> <p>23 Department of Justice with regard to the question of</p> <p>24 whether to appeal?</p> <p>25 A No. I was the chairman.</p>

<p style="text-align: right;">Page 198</p> <p>1 Q Do you know whether or not a resolution was ever 2 formally adopted authorizing the OMC to intervene in the 3 lawsuit to allow the appeal? 4 A Yes. 5 Q And was it? 6 A In '14. 7 Q I'm sorry, I missed that. 8 A On the appeal itself? 9 Q Yes, sir. 10 A Was that on 8/15/15? 11 Q I'm not a hundred percent sure of that date. I 12 know it was in 2015. 13 MR. McCORMACK: Counsel, do you know, Mr. 14 Pipestem? 15 MR. PIPESTEM: I do not know. 16 MR. McCORMACK: I'm sorry, I don't either. 17 A It was taken care of that week on the appeal. 18 MR. McCORMACK: I've think this is good time to 19 break. 20 Mr. Pipestem, I apologize for my 21 under-the-breath statement. I was a little frustrated. I 22 hope you'll forgive me for my momentary lack of 23 professionalism. I apologize for that. 24 MR. PIPESTEM: Apology accepted. 25 MR. McCORMACK: Thank you. All right, how about</p>	<p style="text-align: right;">Page 200</p> <p>1 case-by-case instruction while reserving all my rights. 2 Mr. Pipestem, anything you want to add to that? 3 MR. PIPESTEM: No. 4 Q (BY MR. McCORMACK) All right, so let me show 5 you what has been marked as, it's tab 30, I believe we're 6 already marked it as plaintiff's 165, so let's go back to 7 that one for a second. This is the August 19, 2015 OMC 8 minutes. On page four under the item ODOT, maybe you want 9 to blow that one up. 10 You'll see it says here that someone is at the 11 Osage Minerals Council's meeting on August 19, 2015 from 12 the ODOT, which I read to mean the Department of 13 Transportation in Oklahoma. Is that a fair presumption on 14 my part, Mr. Waller? 15 A Yes. 16 Q All right. And he talks that the department has 17 a lot of work in Osage County over the next several years. 18 I know that historically there had been arranged between 19 OMC and the DOT, but here he states that there is 20 \$42 million in bridgework and some road work underway. He 21 proposes a memorandum of understanding to provide the 22 Minerals Counsel with the projects they have coming up. 23 Do you see that? 24 A Yes. 25 Q Was this the first time that you understand that</p>
<p style="text-align: right;">Page 199</p> <p>1 ten minutes from now? 2 THE WITNESS: Thank you. 3 THE VIDEOGRAPHER: Off the record at 4:22 p.m. 4 (BREAK FROM 4:22 TO 4:33) 5 THE VIDEOGRAPHER: Back on the record at 6 4:33 p.m. 7 Q (BY MR. McCORMACK) Welcome back, Mr. Waller. 8 A Thank you. 9 MR. McCORMACK: One thing I wanted to say before 10 we proceeded to this section is that I have spoken to 11 Mr. Pipestem about an issue that he and I have been 12 talking about throughout the day, which is I have a series 13 of questions that relate to leases and sandy soil permits 14 and waivers that cover a variety of periods of time, 15 including a period of time before November 21, 2014. 16 Mr. Pipestem has advised me that if I were to ask any 17 questions about those subject matters prior to 18 November 21, 2014, he would instruct the witness not to 19 answer those questions for the reasons that he has stated 20 previously on the record today. I have told him that I 21 don't agree with that, that I object to it, and I reserve 22 my rights relative to it. 23 But to save us the gymnastics of having that 24 fight on the record, I will agree to proceed on a period 25 of time that is post November 21, 2014 so as to avoid a</p>	<p style="text-align: right;">Page 201</p> <p>1 there might have been a memorandum of understanding 2 reached between the DOT and Osage Minerals Council with 3 regard to work that the DOT might have been doing out on 4 the mineral reserve, Mineral Estate, rather? 5 A On the reservation this has been a product 6 through our transportation improvement program. 7 Q Do you know if prior to this time that the 8 interactions with the DOT had been on a piecemeal basis 9 and that it led to the decision to go ahead and do a 10 memorandum of understanding for a larger project? Is that 11 what happened here, or have I misread that? 12 A It was to update the MOU to fall under the 13 requirements of the federal regulations. 14 Q I'm sorry, I didn't mean to step on your answer. 15 So prior to this time, that is, in August of 16 2015, there had been memorandums of understanding between 17 the DOT and the Osage Minerals Council? 18 A And the Osage Nation. Those funds are declared 19 through the product that used to be straight to the Tribal 20 Council that I sat on. But after 2006 it's endeavored 21 through the Nation. They have the program, but I 22 represent the shareholders who put the funds in it to the 23 State of Oklahoma through a gross production tax. 24 Q Okay. Do you know whether or not the memorandum 25 of understanding that was referenced here in this</p>

<p style="text-align: right;">Page 202</p> <p>1 August 2015 meeting has periodically been updated between</p> <p>2 the Osage Minerals Council, the Osage Nation, and the DOT?</p> <p>3 A Yes, sir.</p> <p>4 Q So that happens on a periodic basis and that</p> <p>5 gets in front of the Osage Minerals Council for its</p> <p>6 approval?</p> <p>7 A Correct.</p> <p>8 Q In those agreements, is a royalty agreed to</p> <p>9 between the Osage Minerals Council on behalf of the estate</p> <p>10 and the DOT for any materials that might be used by the</p> <p>11 DOT in its construction activities?</p> <p>12 A Yes, sir.</p> <p>13 Q Has that changed over time, that is, in this</p> <p>14 period 2015 forward?</p> <p>15 A Yes.</p> <p>16 Q What is the current royalty rate, if you will,</p> <p>17 for the DOT, if you know?</p> <p>18 A I know. I wrote the law. Ten percent.</p> <p>19 Q That's -- in addition to that, they also pay a</p> <p>20 flat royalty fee?</p> <p>21 A In certain cases that we're not also in on the</p> <p>22 project. Some of the projects are for the tribe, the</p> <p>23 Nation, and then are some are ODOT specific that we're not</p> <p>24 included in but we have some participation due to oil</p> <p>25 wells in the right-of-ways, things of that nature, the</p>	<p style="text-align: right;">Page 204</p> <p>1 description of what they have historically done, the DOT,</p> <p>2 out there?</p> <p>3 A In some cases.</p> <p>4 Q All right. And does that ten percent apply to</p> <p>5 that scenario as well?</p> <p>6 A Yes.</p> <p>7 Q Okay. And so since they're using the soil</p> <p>8 and/or the rock in their construction of roads or</p> <p>9 maintenance of roads, what is the ten percent royalty</p> <p>10 derived from? It's not a sale, so what's it derived from?</p> <p>11 A The contract that was let by the ODOT shows the</p> <p>12 capacity of area they're using, if it's a borrow pit,</p> <p>13 things of that nature.</p> <p>14 Q So it's a volume issue, ten percent? Is that --</p> <p>15 a borrow pit, and I assume you mean the term to mean a</p> <p>16 hole dug in the ground that the soil is used for a variety</p> <p>17 of purposes? Is that a fair description of a borrow pit?</p> <p>18 A Yes, sir. The project, if they can't hold the</p> <p>19 compaction of the road due through the dirt they have, we</p> <p>20 have to bring in another element that will allow</p> <p>21 compaction.</p> <p>22 Q So and then -- so let's say they take out a</p> <p>23 certain amount of dirt from the borrow pit on the estate</p> <p>24 and they use it to build the road. Is ten percent royalty</p> <p>25 derived against some set price for a cubic foot of dirt or</p>
<p style="text-align: right;">Page 203</p> <p>1 moving of utilities, anything that falls under that.</p> <p>2 Q Okay. Going back, because you said you helped</p> <p>3 write the law --</p> <p>4 A Yes.</p> <p>5 Q -- the current arrangement with the DOT is a</p> <p>6 ten percent royalty?</p> <p>7 A That's the update that the Bureau had, but I sat</p> <p>8 on the ITA, as you mentioned, and I was on the Federal</p> <p>9 Highways Administration writing the policies and</p> <p>10 guidelines for all expenditures in Indian country.</p> <p>11 Q Okay, thank you for that. That's significant.</p> <p>12 The question I have is the current arrangement with the</p> <p>13 DOT is a ten percent royalty. How is that calculated?</p> <p>14 A Sir, it goes under the leasing through the</p> <p>15 Bureau of Indian Affairs, and it's calculated through the</p> <p>16 scales. We basically have stayed with that, bring them</p> <p>17 the receipts. They show the sales and it's calculated</p> <p>18 from those.</p> <p>19 Q Well, and that's what I'm trying to get my</p> <p>20 fingers around. Excuse me if I don't know this as well as</p> <p>21 you do, but the DOT, I understand historically what they</p> <p>22 might do is they might go onto the Osage Reservation, they</p> <p>23 might dig up soil or dirt or rock, and they might use it</p> <p>24 in the building of roads or the maintenance of roads and</p> <p>25 things of that nature. Is that a reasonably good</p>	<p style="text-align: right;">Page 205</p> <p>1 a cubic foot rock? How is that set? I'm trying to figure</p> <p>2 it's percent of what number, and where do you get the</p> <p>3 number from?</p> <p>4 A The number is from the receipt, and it's either</p> <p>5 done over running over the scale or the Bureau of Indian</p> <p>6 Affairs will send out their inspectors and they'll</p> <p>7 calculate the volume of the linear square yards that are</p> <p>8 being used.</p> <p>9 Q Okay. I apologize for being a little slow.</p> <p>10 Something I can understand is I saw a number of documents</p> <p>11 that reflected that the rate often paid was 52 cents a</p> <p>12 ton, for instance. That's easy for me to understand.</p> <p>13 Somebody takes out 100 tons, they pay a hundred tons times</p> <p>14 52. But now that the calculation is ten percent, I keep</p> <p>15 trying to figure out ten percent of what? Of the value of</p> <p>16 the materials removed, and then how do you come to that</p> <p>17 value?</p> <p>18 A Because it's written in the building of the</p> <p>19 road, the construction of the usage of said material.</p> <p>20 Q So someone might say look, I'm going to --</p> <p>21 A It's a product.</p> <p>22 Q So somewhere in the contract it would say I'm</p> <p>23 going to need a million dollars worth of dirt or fill, and</p> <p>24 you would get ten percent of that? Is that how that would</p> <p>25 work?</p>

<p>Page 208</p> <p>1 A In most cases.</p> <p>2 Q I see, okay. So that's the point. So somewhere</p> <p>3 in the contract there is an estimation of the volume of</p> <p>4 dirt or fill that might be needed. If that's taken from</p> <p>5 the reservation -- excuse me, from the estate, then you</p> <p>6 would get ten percent of that as a royalty payment?</p> <p>7 A Yes, on the permitting of it.</p> <p>8 Q Okay. So that's based upon the value of the</p> <p>9 contract, and then is it a bid process? How does -- who's</p> <p>10 the one who sets the value, I used a million dollars as an</p> <p>11 example, who's the one that sets the value of the amount</p> <p>12 that would be spent on fill in the contract? Is that --</p> <p>13 is that something that you're involved with as a</p> <p>14 counter-party, or is that just something that the DOT sets</p> <p>15 as what they're going to pay for these materials or what</p> <p>16 they're going to spend on these materials?</p> <p>17 A It is brought to the council, falls under the</p> <p>18 permitting and then it goes through the Bureau of Indian</p> <p>19 Affairs for calculation and payment.</p> <p>20 Q I see, okay. So did that shift, Mr. Waller, at</p> <p>21 least in the materials that I looked at, it looked it</p> <p>22 might've been 52 cents a ton pricing, and then that</p> <p>23 shifted to this ten percent model. Is that generally how</p> <p>24 it's done now for pricing the value of these soil and rock</p> <p>25 excavation removables?</p>	<p>Page 208</p> <p>1 Oklahoma DOT pays for use of the mineral side from the</p> <p>2 estate on a yearly basis, give or take? Half a million?</p> <p>3 A million?</p> <p>4 A I would have to go back to my records.</p> <p>5 Q Any wild guess?</p> <p>6 A I won't make a wild guess.</p> <p>7 Q It doesn't have to be wild.</p> <p>8 A Well, thank you. Now that you've said that, I</p> <p>9 feel better. No, I don't have that number in front of me.</p> <p>10 Q Well, let me ask you this. Is it in the order</p> <p>11 of hundreds of thousands of dollars or in the order of</p> <p>12 millions of dollars? Do you know that?</p> <p>13 A We do not run into that many wells that are</p> <p>14 archaic (phonetic) and in the right-of-way.</p> <p>15 Q Okay, so it's not a meaningful -- well,</p> <p>16 meaningful is the wrong word. It's not a huge number,</p> <p>17 let's put it that way?</p> <p>18 A Yes, sir.</p> <p>19 Q But is the DOT your biggest customer that way,</p> <p>20 and are they the ones who spend the most on those types of</p> <p>21 royalties for the use of the soil and the rock and other</p> <p>22 materials in that manner?</p> <p>23 A It has many options. It's also ODOT, and then</p> <p>24 we go to the Osage County. Any projects that we have, we</p> <p>25 might be fully funding them into the millions. This</p>
<p>Page 207</p> <p>1 A Yes, sir, all new permitting would fall under</p> <p>2 that requirement.</p> <p>3 Q Okay, all right, okay. That's as of when?</p> <p>4 A 2019, but the actual project was done before</p> <p>5 then, and I don't have a specific date in which the Bureau</p> <p>6 of Indian Affairs -- we were negotiating that 51 per cent</p> <p>7 per ton was a low number, so I know you're looking at an</p> <p>8 ancient contract. The contract actually added dollars to</p> <p>9 it, cents in this words, and it every year would increase</p> <p>10 as the lease stated.</p> <p>11 Q Okay. We talked earlier today about what</p> <p>12 percentage of the amount of money that comes into the</p> <p>13 Osage Nation for the mineral rights in the estate, and we</p> <p>14 talked about what percentage of it was oil and gas, what</p> <p>15 percentage of it was mineral. I think we settled on the</p> <p>16 number 97 percent oil and gas and the remaining mineral.</p> <p>17 What kind of money does the DOT pay for the Mineral Estate</p> <p>18 usage that it has, if you know?</p> <p>19 A That's a great question. They pay the -- number</p> <p>20 one, they come to us and our representative at Bureau of</p> <p>21 Indian Affairs, and it's negotiated through ODOT and our</p> <p>22 trustee, and then it is derived on the payment for said</p> <p>23 well because if it's in the right-of-way we're getting</p> <p>24 ready to plug it.</p> <p>25 Q Do you have a ballpark figure of how much the</p>	<p>Page 209</p> <p>1 Transportation Improvement Program, I allocated over</p> <p>2 7 million of our funds in one year to keep the county</p> <p>3 going.</p> <p>4 Q When you say you allocated 7 million of your</p> <p>5 money to keep the county going, I'm not 100 percent sure</p> <p>6 what that means in terms of royalty in a mineral estate.</p> <p>7 Could you help me understand that?</p> <p>8 A These are two different identities you're</p> <p>9 asking. One's a royalty payment; the other is the</p> <p>10 obligation of taking care of our dollars on the</p> <p>11 transportation side.</p> <p>12 Q I see.</p> <p>13 A We separate it.</p> <p>14 Q I got it. One is revenue, the other is expense;</p> <p>15 is that fair?</p> <p>16 A That's close enough.</p> <p>17 Q Yes, okay, I've got it. On the revenue side,</p> <p>18 the DOT or other governmental entities in or around Osage</p> <p>19 County, would you say that is the lion's share of the</p> <p>20 money that the OMC collects as royalties for the use of</p> <p>21 soil, dirt, and gravel pits and things of that nature?</p> <p>22 A Yes.</p> <p>23 Q More than 50 percent? More than 75 percent?</p> <p>24 MR. PIPESTEM: Objection. Compound question.</p> <p>25 Q (BY MR. McCORMACK) Okay. More than 50 percent?</p>

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1 A It's according to how many projects I have. I
2 can't answer that unless I have the shorter-term or
3 long-range plan that has already been vetted through ODOT.
4 **Q I understand, but you're the chairman of the**
5 **Osage Minerals Council. You probably have some sense of**
6 **where your revenues come from?**
7 A Yes, I do.
8 **Q Generally speaking, would you say that more than**
9 **half of the money that you derive from the use of gravel**
10 **or dirt or things of that nature comes from the DOT and**
11 **the Osage County governmental-related entities?**
12 A Now the answer is yes. You added them in.
13 **Q Okay, fair enough. Is it meaningfully beyond**
14 **50 percent, or is it closer to 50 percent?**
15 A I would say 50 percent because I can't obligate
16 how much other that the royalty is coming from through the
17 private sector or taken outside of the county.
18 **Q All right, so let's just use that number, then,**
19 **give or take 50 percent from the DOT and the Osage County**
20 **governmental entities. Who pays you the other give or**
21 **take 50 percent for these mineral rights, if you will, to**
22 **dirt and soil and gravel, that sort of thing?**
23 A Whoever buys it from the quarry.
24 **Q Okay. Is the quarry run by the Osage Minerals**
25 **Council, or is it run by a private enterprise in**

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1 **conjunction with the Osage Minerals Council?**
2 A It's private sector, and it is under the leasing
3 that it is -- those are specifically done by weight
4 tickets.
5 **Q Okay, what is -- so for the quarry, I guess you**
6 **called it the quarry, is that the right term?**
7 A Yes.
8 **Q Is there more than one private enterprise out**
9 **there working on the quarry where they sell rock and fill**
10 **and other items from the estate, or is there just one?**
11 A The question is is that there's more than one,
12 yes.
13 **Q Okay. And we've walked through, as best I could**
14 **pull it off, the conversations about the DOT and what they**
15 **currently pay, and you mentioned a moment ago, I think,**
16 **that for these private enterprises that are using these**
17 **quarry pits that they pay by weight; is that right?**
18 A Yes, sir.
19 **Q What is their current freight, if you will?**
20 **What do they pay -- what do they pay per, say, ton, if**
21 **that's how it's done?**
22 A At the sale of the tonnage on the ticket.
23 **Q Yes, sir.**
24 A Ten percent of it.
25 **Q So in other words, if they dig out four**


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1 **truckloads of soil and they sell it for \$10,000, I don't**
2 **know, 5000? I don't know what -- I apologize, I don't**
3 **know the pricing.**
4 A That's a little high.
5 **Q A little high, okay. You would get ten percent**
6 **of that retail sale, if you will?**
7 A Yes.
8 **Q Okay. Okay, was that also changed in the last**
9 **several years from a particular -- we talked about 51, 52**
10 **cents a ton?**
11 A Yes.
12 **Q That changed also to just 10 percent of the**
13 **ultimate sale?**
14 A Yes, as the Code of Federal Regulations
15 required.
16 **Q Okay. How did that -- were you part of that,**
17 **you personally, part of the effort to change the Code of**
18 **Federal Regulations to allow that ten percent?**
19 A No.
20 **Q No, okay. But that's -- that's the operative**
21 **CFR provision at this point?**
22 A That we live by, yes.
23 **Q And that's been in -- I think you said that**
24 **started in 2019?**
25 A That's the last updated ODOT MOU I have. The

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1 amount came to us before then through our superintendent.
2 **Q Okay. And prior to that change in 2019 and in**
3 **these privately run quarries on the reservation, the**
4 **pricing was per ton, and that was in the vicinity of 50,**
5 **60 cents per ton?**
6 A Just like the contract you picked the 51 off of.
7 That's how it was done.
8 **Q Sure. Do you know, was that, in other words on**
9 **the several private quarries that exist out there on the**
10 **reservation, would they have the similar pricing or the**
11 **same pricing, 51, 52, whatever it might've been per ton,**
12 **in that time frame?**
13 A At that point in time, yes.
14 **Q Okay. In other words, you weren't charging one**
15 **80 cents and another one 30 cents; you were charging them**
16 **in the vicinity of 50, 60 cents per ton?**
17 A Until the ten percent came in, yes.
18 **Q Okay. And that was -- that ten percent came in**
19 **in 2019, and prior to that time it always been on a**
20 **per-ton basis?**
21 A Yes, and that probably preceded '19.
22 **Q Okay. Do you know what the price per ton was in**
23 **the period right before the regulations changed to make it**
24 **a ten percent royalty?**
25 A We had in some cases over 57 and 59.

<p>Page 214</p> <p>1 Q Okay. So somewhere between 50 and 60 cents in 2 the period prior to 2019?</p> <p>3 A Until the increase of ten percent become 4 established.</p> <p>5 Q Let me ask you as someone who basically runs a 6 huge business. What has the difference in that royalty 7 meant? Has it increased your revenue from that point of 8 your operations five percent? Ten percent? 9 Fifteen percent?</p> <p>10 A I think over that.</p> <p>11 Q Over that, okay. All right, that's good.</p> <p>12 A Not much, though.</p> <p>13 Q Not much. So somewhere ten, 15 percent give or 14 take?</p> <p>15 A Yes, there was an increase.</p> <p>16 Q How about the volume? Has the volume stayed 17 essentially the same for many years, or has it gone up or 18 gone down in this period, say, 2015 to today?</p> <p>19 A It's stayed basically the same.</p> <p>20 Q Let me show you what has been -- it's under tab 21 50 for the concierge. I'll mark this as the exhibit next 22 in order. Perhaps you can tell me what that is. I know 23 we're around 164, is that right, 165?</p> <p>24 MR. PIPESTEM: Counsel, before we get to that 25 question, I'm showing it's three minutes till 5 p.m.</p>	<p>Page 216</p> <p>1 seven hours or it has to end at five, so no later than 2 five. So if you had started earlier than 10 a.m. we'd 3 still be going. But if you start the deposition late, you 4 still have to end by five.</p> <p>5 MR. McCORMACK: You guys are tough out there in 6 Oklahoma. Mr. Pipestem, are you going to give me a little 7 bit more time, or are you going --</p> <p>8 MR. PIPESTEM: I don't think so. Tell me how 9 many more questions you have.</p> <p>10 MR. McCORMACK: Well, just let me quickly look 11 at my outline here. Hold on. Well, there's no chance I'm 12 going to get my questions done in 15 minutes, so I'm not 13 sure doing 15 minutes is going to do us much good. I may 14 end up having to 30(b)(6) some of these questions, so what 15 are you going to do?</p> <p>16 Anyway, I haven't heard from anybody on my side 17 of the aisle, so tell me for the future so I know. You're 18 telling me no matter what time someone starts a deposition 19 in the Northern District of Oklahoma that at 5:00 20 everybody knocks off? That's the way the rule is?</p> <p>21 MR. PIPESTEM: Under the local rule, yes.</p> <p>22 MR. ASHWORTH: Unless there's an agreement of 23 the parties.</p> <p>24 MR. McCORMACK: That would be good for me to 25 know.</p>
<p>Page 215</p> <p>1 Under the federal and the local rule, we have reached the 2 end of the deposition at 5 p.m. Central, so I encourage 3 you to wrap up any questions that you have.</p> <p>4 MR. McCORMACK: A couple of questions. My 5 understanding of that rule is similar to many other 6 jurisdictions that it doesn't count break time, so I 7 think -- or lunchtime. I think that would probably give 8 me at least an hour. I have no desire to keep the 9 deposition going unnecessarily, but let me check and see 10 if we have an agreement on that point or whether I'm a 11 cult of one on that.</p> <p>12 MR. ASHWORTH: I would note that I think the 13 local rules are clear that it's seven hours or it has to 14 end at five. Regardless of whether you start at 4:00, it 15 still has to end at five unless there's an agreement of 16 the parties.</p> <p>17 MR. McCORMACK: Okay. That suggests you're 18 being kind to me, Counsel, and I should try to wrap up. 19 Is that -- listen, I apologize, I'm not an Oklahoma 20 lawyer, but some of the Oklahoma lawyers on the call, we 21 started at -- I see what you're saying. We started at ten 22 local time; it's now five local time. Is it true you 23 don't count -- I know in many districts you don't count 24 break time for that seven hours.</p> <p>25 MR. ASHWORTH: I would agree with that, but it's</p>	<p>Page 217</p> <p>1 MR. PIPESTEM: It's in the local rule.</p> <p>2 MR. McCORMACK: No, I understand, I understand. 3 What I had been advised was I had seven hours not 4 including breaks, so I didn't get the information I 5 needed. I guess, Mr. Pipestem, that suggests that I'm 6 going to say, thank you, Mr. Waller for attending today. 7 I appreciate it very much, and I guess have no choice but 8 to stop at 5:00. I'm assuming my colleagues in Oklahoma 9 are giving the straight dope, and I'll accept it, so there 10 you go.</p> <p>11 THE WITNESS: Thank you, Tom.</p> <p>12 MR. McCORMACK: You bet.</p> <p>13 THE VIDEOGRAPHER: We're now off the videotape 14 record. The time is 5:01 p.m. 15 (DEPOSITION CONCLUDED AT 5:01 P.M.) 16 17 18 19 20 21 22 23 24 25</p>

<p style="text-align: right;">Page 218</p> <p>1 ERRATA SHEET</p> <p>2 USA and Osage Minerals Council vs. Osage Wind, et al.</p> <p>3 DEPOSITION OF EVERETT WALLER</p> <p>4 REPORTED BY: MIKE WASHKOWIAK, CCR</p> <p>5 DATE DEPOSITION TAKEN: AUGUST 5, 2021</p> <p>6 JOB NO. 151610</p> <p>7 PAGE LINE IS SHOULD BE</p> <p>8 _____</p> <p>9 _____</p> <p>10 _____</p> <p>11 _____</p> <p>12 _____</p> <p>13 _____</p> <p>14 _____</p> <p>15 _____</p> <p>16 _____</p> <p>17 _____</p> <p>18 _____</p> <p>19 _____</p> <p>20 _____</p> <p>21 _____</p> <p>22 _____</p> <p>23 _____</p> <p>24 _____</p> <p>25 _____</p>	<p style="text-align: right;">Page 220</p> <p>1 CERTIFICATE</p> <p>2 STATE OF ARKANSAS)</p> <p>3) SS:</p> <p>4 COUNTY OF WASHINGTON)</p> <p>5 I, Mike Washkowiak, Certified Court Reporter</p> <p>6 within and for the State of Arkansas, do hereby certify</p> <p>7 that the above-named EVERETT WALLER was by me first duly</p> <p>8 sworn to testify the truth, the whole truth, and nothing</p> <p>9 but the truth, in the case aforesaid; that the above and</p> <p>10 foregoing deposition was by me taken and transcribed</p> <p>11 pursuant to agreement, and under the stipulations</p> <p>12 hereinbefore set out; and that I am not an attorney for</p> <p>13 nor relative of any of said parties or otherwise</p> <p>14 interested in the event of said action.</p> <p>15 IN WITNESS WHEREOF, I have hereunto set my hand</p> <p>16 and official seal this 11th day of August, 2021.</p> <p>17 </p> <p>18 MIKE WASHKOWIAK, CCR</p> <p>19</p> <p>20 State of Arkansas, No. 654</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: right;">Page 219</p> <p>1 JURAT</p> <p>2 USA and Osage Minerals Council vs. Osage Wind, et al.</p> <p>3 I, EVERETT WALLER, do hereby state under oath</p> <p>4 that I have read the above and foregoing deposition in its</p> <p>5 entirety and that the same is a full, true and correct</p> <p>6 transcription of my testimony so given at said time and</p> <p>7 place.</p> <p>8</p> <p>9</p> <p>10 _____</p> <p>11 Signature of Witness</p> <p>12</p> <p>13</p> <p>14 Subscribed and sworn to before me, the</p> <p>15 undersigned Notary Public in and for the State of Arkansas</p> <p>16 by said witness, EVERETT WALLER, on this _____ day</p> <p>17 of _____, 2021.</p> <p>18</p> <p>19</p> <p>20</p> <p>21 _____</p> <p>22 NOTARY PUBLIC</p> <p>23 MY COMMISSION EXPIRES: _____</p> <p>24 JOB NO. 151610</p> <p>25</p>	